

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of
RACINE PROFESSIONAL EMPLOYEES ASSOCIATION

Involving Certain Employees of

CITY OF RACINE

Case 288
No. 54191
ME-840

Decision No. 24840-A

Appearances:

Weber & Cafferty, S.C., Attorneys at Law, by **Mr. Robert K. Weber**, 2932 Northwestern Avenue, Racine, WI 53404, for the Association.

Long & Halsey Associates, Inc., by **Mr. William R. Halsey**, Suite 500, 8338 Corporate Drive, Racine, WI 53406, for the City.

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

On June 13, 1996, the Racine Professional Employees Association petitioned the Wisconsin Employment Relations Commission to clarify an existing bargaining unit represented by the Association to include the position of Assistant City Attorney II. On August 15, 1996, the Association petitioned for the inclusion of a second position also called Assistant City Attorney II. On August 28, 1996, the Association petitioned for the inclusion of 76 positions. All three petitions were combined for the purpose of hearing and the Commission assigned a member of its staff, Karen J. Mawhinney, as the hearing examiner in the matter. The Examiner, with the consent of both parties, held two days of mediation in the matter on November 7 and 8, 1995, and the Association revised the list of disputed positions. Hearings were ultimately held on March 4, 5, 6 and May 2, 1997, at which time the Association asked for inclusion of 27 positions. Transcripts of the proceedings were prepared and the parties declined to file briefs but submitted post-hearing exhibits, the last of which was received on June 20, 1997. The Association asked the Commission on July 15, 1997, to dismiss its petition for the Assistant City Attorneys. The record was closed on that date.

The Commission, having considered the evidence and arguments of the parties, and being

fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

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FINDINGS OF FACT

1. The City of Racine, herein the City, is a municipal employer having its offices at 730 Washington Avenue, Racine, Wisconsin 53403. The City's Personnel Director is James Kozina. The City employs a total of 940 full-time equivalent positions. Of that number, approximately 135 are not represented by any union. The City has 10 bargaining units, including the professional unit involved in this proceeding. Other unions mentioned in this proceeding include AFSCME Local 67 (Department of Public Works and Parks employes) and AFSCME Local 2239 (clerical employes), as well as the police union and firefighters' union.

The City hires a large number of part-time employes -- about 300 to 400 in the peak seasons -- who work as umpires in the summer and referees in the winter, and in other positions such as timer scorers, gym custodians, lifeguards, and playground leaders. Some are paid by the hour and some by a game or event. In general, game officials such as umpires and referees are paid per game. Others, such as recreation leaders, gym instructors, community center leaders, ice rink supervisors, locker room attendants, timer scorers, lifeguards, and playground leaders, are paid per hour.

2. The Racine Professional Employees Association, herein the Association or Union, is a labor organization representing a collective bargaining unit which was certified on October 28, 1987, by the Commission following an election conducted on October 14, 1987. The 1996-1997 collective bargaining agreement between the City and the Association contains the following recognition clause:

The Employer herewith recognizes the Racine Professional Employees Association (R.P.E.A.), as the sole collective bargaining representative of the employees included within a collective bargaining unit consisting of all regular full-time and regular part-time professional employees of the City of Racine (excluding Health Department employees), Building Inspectors, Electrical Inspectors and Plumbing Inspectors in the employ of the City of Racine, excluding managerial, supervisory, confidential and casual employees.

There are currently 40 employes in the bargaining unit. The Association has petitioned to include in the bargaining unit the following positions:

1. Ass't Finance Director/Ass't Treasurer - Daniel DeBonis
2. Purchasing Manager - A. Robert Fragale
3. Library Head of Circulation - Robert Margis
4. Library Head of Children's Services - Darcy Mohr
5. Library Head of Adult Services - Jill Hartmann
6. Library Head of Technical Services - Mary Lou Nortstrom

7. Library Business Manager - Daniel Schultz
8. Library Computer Technician - Frederick Fischer
9. Benefits Coordinator - Julie Anastasio
10. Ass't Commissioner of Public Works - Keith Haas
11. Chief Building Inspector - Robert Jensen

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12. Ass't City Engineer/Traffic Engineer - Thomas Eeg
13. Civic Centre Administrator - Nancy Weatherhead
14. Ass't Civic Centre Administrator - Diana Felix
15. Senior Adult Program Supervisor - Jeanne Lynn Brenner
16. Manager of Recreation - Donnie Snow
17. Manager of Athletics - Jeff McDorman
18. Cemetery Manager - Eugene Schuster
19. Manager of Cultural Services - Wendell Anderson
20. Recreation Supervisor II - Charles Strasburg
21. Recreation Supervisor II - Sue Henry
22. Recreation Supervisor II - James Wilson
23. Recreation Supervisor II - Ray Hammermann
24. Recreation Supervisor II - Morris Reece
25. Recreation Supervisor II - Tom Molbeck

For all positions except #8 above, the City stipulated that the incumbent employe was a professional employe, eligible for inclusion in the bargaining unit but for their status as either a confidential employe, supervisor, managerial employe, or a combination thereof. As to position #8, the Library Computer Technician, the City stipulated that incumbent Frederick Fischer was eligible for inclusion in a bargaining unit if he is a professional employe.

3. 1st Position - Assistant Finance Director/Assistant Treasurer - Incumbent DeBonis. The City argues the position should be excluded from the bargaining unit because the incumbent is a supervisor and a managerial and confidential employe.

Daniel DeBonis has held this position for about two years. He reports to the Finance Director/Treasurer, Jerome Maller. DeBonis oversees functions in the Finance Department and Treasurer's office, such as the payroll, accounts payable, and he invests and manages assets for the City. There are 19 positions under him in the Department. DeBonis participates in the hiring process by sitting in on interviews of job applicants. He makes effective hiring recommendations to the Finance Director. He has not imposed any discipline on or recommended any discipline of employes. DeBonis can effectively recommend discipline to Finance Director Maller. He fills out performance evaluations for five people within the Treasurer's office and discusses the employes' performance with them before turning it over to the Finance Director, who also signs it. He has recommended an employe for promotion, by recommending that an Accountant III be given additional authority over the payroll. He serves as secretary for the Finance and Personnel Committee. He has the authority to assign work to employes, change their hours of work, approve overtime, grant requests for time off, and he has done all those functions.

There are employes represented by two different bargaining units in the Department -- the

professional unit (RPEA) and the secretarial unit (Local 2239, AFSCME). DeBonis is not involved in any bargaining and he does not make proposals for contract negotiations. He is not involved in handling grievances. As secretary to the Finance and Personnel Committee, he attends closed sessions where labor relations matters are discussed. He has costed preliminary bargaining proposals for budget preparation, but he has not costed proposals that were not shared with the unions. He does not prepare arbitration cases.

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DeBonis has reviewed and updated policies and procedures for his Department, and he would discuss changes in procedures or policies with the Finance Director. He has influence over the level of services provided to the public, the hours that the Department is open for the collection of taxes, the type of information provided to the public, and whether there is a service charge for that type of information. He helps develop a budget book from other departments' requests. He does not make any recommendations to the City Council about the budget. He does not take bids, but he enters into contracts to purchase investments or bank service fees. He moves cash from banks on a daily basis and reinvests idle cash in securities at a number of banks. State law determines what types of investments a governmental unit can make. DeBonis decides where to invest based on his own knowledge of interest rates, collateralization of investments and who will get the money back to the City the fastest when needed.

The Assistant Finance Director/Assistant Treasurer has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

4. 2nd Position - Purchasing Manager - Incumbent Fragale.

The City contends that the position should be excluded from the bargaining unit because Fragale is a supervisor and a managerial and confidential employe.

A. Robert Fragale has been the Purchasing Manager for 17 years and he reports to the Finance Director, Maller. He directs the negotiation, contracting, and purchase of equipment, materials and supplies for City departments. He also disposes of surplus equipment. There is an assistant under him who is in the professional unit and a clerk typist who is in the secretarial unit. Fragale has been involved in hiring employes, going through applications and sitting in on interviews and making recommendations which have been accepted. He has the authority to issue oral and written reprimands and has issued two or three oral reprimands. He fills out performance evaluations once a year on the two employes under him. He has never been involved in a grievance procedure. He assigns work, changes work assignments, authorizes overtime, calls in additional or replacement employes, and grants requests for time off.

Fragale does not participate in bargaining or negotiations with the unions. He does not cost bargaining proposals or attend meetings where labor relations matters are discussed. He does not have access to or knowledge of the City's strategy in collective bargaining and does not prepare arbitration cases.

Fragale develops programs and policies, such as getting a special resolution to designate a particular vendor to supply oil to the City. State law requires that any purchase over \$10,000 has to have a bid bond and be formally advertised, and Fragale has a procedure to get at least three quotations. The Finance Committee authorizes him to get specifications and bids. He is involved

in the budget process to find out cost factors for different departments. During budget hearings, he is questioned about pricing for those budgets to see if there is better pricing or ways to eliminate something. He negotiates with suppliers and contractors and is the chief negotiator in terms of procurement. He deals with abandoned car bids, sets up specifications for capital outlays, and works with the City Attorney's office. He has dealt with insurance adjustors due to an incident in which the Safety Building was flooded. Fragale is involved in contracting for

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goods and services that amount to several million dollars each year. A City ordinance states that the purchasing agent shall be the head of the purchasing department and that he shall be appointed by the mayor, subject to confirmation by the common council.

The Purchasing Manager has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

5. 3rd Position - Library Head of Circulation - Incumbent Margis. The City contends that the position should be excluded from the bargaining unit because Margis is a supervisor and/or a managerial employe.

Robert Margis has been the incumbent for the last seven years. Margis has a circulation staff of 35 part-time employes and five full-time employes working under him. None of them are in any bargaining units. The full-time employes are clerical employes, and the part-timers are used to shelve books and check out materials. Margis reports to the City Librarian, Dr. Jay Chung. A large part of his time is spent in assigning duties and following up on the accuracy of shelving to make sure people are doing the work correctly. Margis hires all the part-time employes by himself and sits in on interviews with Dr. Chung and someone from the Personnel Department when applicants for full-time positions are being considered. There is a lot of turnover in the part-time positions (some are high school students) and he has hired around 100 people in the last two or three years. Margis has the disciplinary authority to issue oral and written reprimands. He has not disciplined any full-time employes but has frequently disciplined part-time employes, approximately once a week. He has given a part-time employe a suspension without pay, with the approval of Dr. Chung. He gives annual performance evaluations to both full-time and part-time employes. He assigns work, changes work assignments, schedules employes, changes hours of work, authorizes overtime, and grants requests for time off.

Margis makes recommendations to change policies or procedures, such as recommending a change in a circulation policy to Dr. Chung, who would then take it to the Library Board. He has recommended changes in loan periods or matters related to circulation. The Library Board has to approve of those changes. Margis makes recommendations to Dr. Chung regarding his needs for budget purposes, but does not create a budget.

The Library Head of Circulation has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

6. 4th Position - Library Head of Children's Services - Incumbent Mohr. The City contends that Mohr should be excluded from the bargaining unit because she is a supervisor and/or managerial employe.

The Head of Children's Services in the Library is Darcy Mohr, who has held that position for a year and a half. Children's Services maintains materials for children for circulation and has programs such as story times and outreach in the early childhood center that distributes materials to day care centers. Mohr heads a department that includes one part-time and two full-time professionals who are in the Association unit, several professional substitutes

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and two part-time non-professional employees. Mohr's supervisor is Dr. Chung, the City Librarian. Mohr has the authority to interview and hire part-time employees and sits on an interview panel with Dr. Chung and someone from Personnel for hiring full-time employees. She has recommended hiring the two part-time employees currently on staff, and was involved in the hiring of one full-time professional employee and the half-time professional employee. While she has the disciplinary authority to issue oral and written reprimands, she has not done so. A suspension would call for the approval of Dr. Chung. She has given performance evaluations to employees. She does not have the authority to adjust grievances. She assigns work, changes work assignments, schedules employees, changes their hours of work, authorizes compensatory time, and grants requests for time off. Mohr calls in a professional substitute every week from a pool to replace regular employees on leave.

Mohr develops policies with other department heads in the Library, such as policies for new technology. She develops programs for the Children's Department. Dr. Chung and the Library Board have to approve of policy changes. Mohr can determine service levels within her department, such as the number of story times or programs and classes. She recommends to Dr. Chung the budgetary needs for her department and oversees spending for the department. She arranges for performers to come to the Library, but Dr. Chung signs those contracts. Dr. Chung determines how much money each department is allocated for buying books or materials.

The Library Head of Children's Services has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

7. 5th Position - Library Head of Adult Services - Incumbent Hartmann. The City contends that Hartmann should be excluded from the bargaining unit because she is a supervisor and/or managerial employee.

Jill Hartmann has been the Head of the Adult Services Department at the Library for about seven years. She supervises the reference desk in the department, the inter-library loan services and the bookmobile and outreach operations. There are five full-time and one half-time librarians and one clerical employee at the reference desk. There is a full-time librarian and one and one-half clerical assistants in the inter-library loan area. There are two full-time and six part-time employees in the bookmobile. Hartmann effectively hires part-time employees by herself, with final approval from Dr. Chung, and she sits on an interview panel with Dr. Chung and someone from Personnel for hiring full-time applicants. She has hired five or six part-time employees and made recommendations for three full-time reference librarians. She has the authority to issue both oral and written reprimands but has not done so. She gives annual performance evaluations to employees. She has recommended that part-time employees have a change in their wage rates, which was accepted. She schedules employees and assigns them work, generally as a long-term

assignment. She has changed their work assignments and their hours of work and grants requests for time off. She authorizes overtime, generally for Sunday hours and the bookmobile driver. She calls in a professional substitute if extra help is needed when a regular employe is out sick.

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Hartmann has been involved in developing a collection development policy for adults, and she was the primary author of the reference services policy. Once she and her staff have completed work on a procedure or policy, it goes to Dr. Chung who presents it to the Library Board for approval. The Board also has the authority to set fees, although the department heads may make recommendations for fees. The Board must approve changes in services or programs. Hartmann makes recommendations to Dr. Chung for budget matters.

The Library Head of Adult Services has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

8. 6th Position - Library Head of Technical Services - Incumbent Nortstrom. The City argues Nortstrom should be excluded from the bargaining unit because she is a supervisor and/or managerial employe.

Mary Lou Nortstrom has been the Head of the Technical Services Department in the Library for 13 years, and she is also the assistant administrator for the Library's automated system that covers acquisitions, circulation, cataloging and on-line cataloging. She oversees ordering of material, receiving, cataloging and processing 30,000 items a year. She has a staff of seven full-time and four part-time employes. She has hired part-time employes on her own, and sits on an interview panel with Dr. Chung and Bill Dyess from Personnel when full-time employes are being hired. She has the authority to issue oral and written reprimands, and has issued about five oral reprimands but no written reprimands. She evaluates employes annually, completing performance evaluation forms on her own. She assigns work to employes and changes work assignments. She does not have the authority to change schedules without approval from Dr. Chung, except that she gives a computer technician time off so he can come in on the weekends. She does not authorize overtime and everyone in her department except the computer technician works a 40 hour week. She grants requests for time off. She spends about an hour a day dealing with personnel matters and a lot of time planning for new technology.

Nortstrom has developed procedures such as handling the flow of material when a book arrives. She can make recommendations for changes, such as cataloging a collection that they have not done before, but this is usually done in conjunction with other Library department heads. Dr. Chung decides how much money is allocated for her department and she works within those guidelines in spending for supplies. She can recommend changing vendors, but she does not enter into any contracts on behalf of the Library.

The Library Head of Technical Services has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

9. 7th Position - Library Business Manager - Incumbent Schultz. The City contends Schultz should be excluded from the bargaining unit because he is a supervisor and/or managerial

employe.

Daniel Schultz had held this position for only one year and one month at the time of the hearing in this matter. He assists Dr. Chung in day-to-day operations of the Library, he

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manages the financial affairs of the Library, and he is the purchasing agent for the Library. He has one full-time and one part-time clerical employe in his department, and they are not members of a bargaining unit. He also schedules and supervises work for the six part-time janitors in the Library. The janitors are not unit members either. Schultz has recommended two part-time employes to be hired, and Dr. Chung has accepted those recommendations. He has given about six oral reprimands to his regular staff and the part-time janitorial staff, but has not issued a written reprimand. The oral reprimands have not been reduced to writing or put in any personnel file. He has given his full-time assistant a performance evaluation. No formal evaluations are made on part-time employes. Schultz schedules employes but is limited in giving the janitorial staff hours because the City wants to keep them below a certain number of hours per week. Schultz gets Dr. Chung's approval before authorizing overtime. He assigns work to his assistants and changes those assignments. The janitors' schedule does not change day by day, but Schultz checks up on their work and recommends ways to do things better. The majority of his time is spent in providing accounting services.

Schultz does not develop programs or policies for the Library. The activities are defined by the needs of the business office. He assists Dr. Chung in putting a budget together and determines the costs for certain items. He does not evaluate budget priorities. He recommends vendors for day-to-day purchases and can change those vendors. He enters into contracts with vendors if the amount is under \$1,500.00. If the amount were over \$1,500.00, a contract would need the approval of the Library Board. The Board has a purchasing policy which Schultz follows in picking between vendors.

The Library Business Manager has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

10. 8th Position - Library Computer Technician - Incumbent Fischer. The City contends that Fischer is not a professional employe.

Frederick Fischer is the Computer Technician and has held that job for only four months. He worked at Johnson Wax before becoming a City employe. He fixes computers and terminals, installs equipment and gets it running, adds memory to the computers and studies new technology. He trains staff how to use new applications, and he creates and runs computer reports as requested by others. Fischer has a two-year associate degree in accounting, and has taken 10 or 12 programming courses as well as general knowledge courses. The Library required a two-year associate degree in computer science or equivalent experience for this position, and Fischer's prior work experience -- working with computers for 19 years -- qualified him for the position rather than his education. His work with the Library is more routine and technical, rather than intellectual. Fischer does not make many decisions in his work. He may decide whether to pull a terminal out or take a system down or call a software manufacturer and get some backup. When a computer system has a problem, he knows what to look for, mostly from his experience. He was a repair

technician at Johnson Wax and learned a lot about computer systems on that job. His education and course work gives him a way to understand procedures and look at things intelligently and make good decisions rather than quick decisions. He usually discusses his decisions with his supervisor, Nortstrom. He would not make the decision to take the system down when the Library is open without talking to

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Nortstrom, who would also probably clear it with Dr. Chung. Fischer can make corrections and changes on his own and exercises his discretion to fix individual computers. He has been spending much of his time studying the local area network system. His position does not qualify him to move to another or higher position in his department.

The work of the Library Computer Technician is not predominately intellectual and varied in character but does involve the consistent exercise of discretion and judgment in its performance and the result accomplished cannot be standardized in relation to a given period of time. The work does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education. The incumbent in the position is not performing work under the supervision of a professional person in order to qualify himself to become a professional employe.

11. 9th Position - Benefits Coordinator - Incumbent Anastasio. The City contends Anastasio should be excluded from the bargaining unit because she is a confidential employe.

Julie Anastasio had held this position for seven months at the time of the hearing. She handles health, dental, and life insurance and pension benefits. She explains the benefits to new employes and signs them up for the appropriate benefits. She answers questions from employes regarding benefits and helps them resolve problems. She reviews monthly billings from companies for accuracy and tracks payments for retirees who pay their own benefits. She has not participated in the development of bargaining proposals. She has gathered current costs of benefits but has not looked at alternative benefits or their costs. She has answered questions from other cities about levels of salaries or benefits but has not gathered comparable data from them. She has not attended any executive sessions where labor relations matters have been discussed. She has no access to the locked files in Kozina's office but has access to other files kept in the Personnel Department. She has not prepared reports that would affect bargaining unit employes or been involved in any correspondence that involves labor relations matters. She has not investigated another employe's behavior where such behavior might lead to discipline. She does not develop answers to grievances or participate in settling grievances. She has not helped prepare an arbitration case or any litigation for labor relations matters. She does not help develop work rules. Anastasio conducted a salary survey for positions in the Engineering Department. She has been named along with Affirmative Action Officer Dyess as someone to contact concerning allegations of sexual harassment but she has not had an occasion to do so. She anticipates that she would talk with any employe who felt they had a sexual harassment claim, have them complete a form and interview the employe being charged, and meet with Dyess to determine whether there was cause for a complaint and disciplinary action.

Anastasio reports to the Personnel Director, James Kozina. Her office is across a hallway from his office. The position of Benefits Coordinator is a new position. The Personnel Department

has four professionals and two secretaries, none of whom are in a bargaining unit. The four professionals include Kozina, Affirmative Action Officer Dyess, Senior Personnel Officer Terry Parker and Anastasio. There was a safety officer, Chuck Hawks, who recently retired, and Parker took over his duties, and the duties regarding benefits were moved to the new position now occupied by Anastasio. Hawks' position was previously in the City Clerk's

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office and it was in the professional unit before the function was moved to Personnel. Hawks remained in the unit after moving to the Personnel Department, but when he retired, the function went to Parker, already excluded as a confidential employe.

Kozina intends to use Anastasio in future contract negotiations, particularly in costing and finding the impact of proposals on the insurance plans. During the seven months that Anastasio has been working for the City, Kozina has not been engaged in any contract negotiations with any of the unions. Kozina has access to the City Attorney's office for grievance and arbitration work. Assistant City Attorney Guadalupe Villarreal has been the principal person handling arbitration cases and participates in grievance mediation and settlement discussions as well as preparing and litigating arbitration cases. Everyone in the Personnel Department has access to Kozina's files that contain labor relations strategy and bargaining proposals that are not shared with the unions. Kozina keeps employe evaluations in a locked file. Hawks did not have access to files relating to labor relations, bargaining and grievance arbitrations when he worked in Personnel and was a union member, because Kozina kept those files locked. During contract negotiations with the Association for a 1996-97 labor contract, the City proposed to remove the Safety Officer (Hawks' position) from the bargaining unit but the contract was settled without that position being excluded. In May of 1996, the City's Finance and Personnel Committee voted to eliminate the position of Safety Officer and create the position of Benefits Coordinator, and the City Council agreed.

The Benefits Coordinator does not have sufficient access to, knowledge of or participation in confidential matters relating to labor relations to be deemed a confidential employe.

12. 10th Position - Assistant Commission of Public Works - Incumbent Haas. The City contests the inclusion of Haas into the bargaining unit on the grounds that he is a supervisor and a managerial and confidential employe.

Keith Haas has held this position for three and a half years and he reports to the Commissioner of Public Works, Rick Jones. The Department of Public Works (DPW) oversees the Engineering Department, the Building Inspection Department, the Streets, Solid Waste, and Bridges Division, the Equipment Maintenance (Garage) Division, and Building Complex Maintenance. The whole Department has about 150 employes. Haas works in the administration office in City Hall, where there are two secretaries, a special projects coordinator and Jones. The secretaries are in the clerical unit. Haas oversees the Building Complex Division -- five major buildings consisting of City Hall, Safety Building, City Hall Annex, Library and Memorial Hall. He oversees a maintenance staff and tries to have one person in each building during the day, as well as one at night in the Library. While Schultz oversees the janitorial staff at the Library, Haas oversees the maintenance employes who fix windows, roofs, plumbing, heating and electrical problems. Haas also hires private contractors for projects such as new roofs, new windows, and crumbling steps. He is in charge of maintenance and repair and operation of the two lift bridges in the City that are

staffed with four full-time employees for eight months of the year at one bridge, and with four other employees on a temporary reassignment basis at the other bridge. Custodial and maintenance employees working in the buildings and employees working at the bridges are members of Local 67, AFSCME.

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Haas has participated in collective bargaining and served as the Department's representative for the last labor contract negotiated with Local 67, AFSCME. He sat in on every bargaining session with the management team consisting of Kozina, Parker, Villarreal, Joe Golden and Jack Richards. Haas has not hired anyone for the maintenance area, and the employees he oversees are placed by Personnel and are usually entry level positions for solid waste collectors. He and another secretary in the office and someone from Personnel interviewed applicants for a new secretary, and his recommendation as to which applicant to hire was accepted. He evaluates two employees on an annual basis -- Ed Doonan who oversees the Building Maintenance Department and another person. He has taken disciplinary action with two maintenance employees at the Library, and spoke with Dr. Chung about it. Haas disciplined one of them twice and gave a suspension to another, with the help of the Personnel Department. Haas assigns work to employees, creates their schedules and changes their hours of work, authorizes overtime, and negotiates with the union over adjustment of grievances. He assists in preparing budgets for the Department and helped determine how to make budget cuts directed by the Mayor. He works on the Library budget with Dr. Chung for handling problems such as a boiler or air conditioner or some building improvement.

The Assistant Commissioner of Public Works has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

13. 11th Position - Chief Building Inspector - Incumbent Jensen. The City contends Jensen should be excluded from the bargaining unit because he is a supervisor and/or a managerial employee.

Robert Jensen has been the Chief Building Inspector for 12 years. Jensen oversees the Building Department, which includes three building inspectors, two electrical inspectors, two plumbing inspectors, and one full-time and one part-time secretary. The inspectors are members of the Association unit and the secretaries are in the Local 2239, AFSCME unit. Jensen reviews with the inspectors various projects that are going on in the City and assists them in resolving problems with code violations and contractors. He goes out on inspections to look at the jobs and makes final interpretations of the building code. He drafts changes to the local building code and the fee schedule. He wrote a building inspector's manual on how to proceed with inspections and appear in court. He is the secretary to the Zoning Board of Appeals and the Building Board of Appeals, and the zoning administrator for the City. He interprets and enforces the zoning code.

Jensen sits in on a panel to interview job applicants, along with someone from Personnel as well as an inspector. He can discipline employees with oral and written reprimands without checking with the Department head, Jones. Most of his disciplines in the past few years have been verbal. He gives performance evaluations to eight employees. The hours of work for employees are set by contract, but Jensen determines when employees should be in the field and when they should take breaks. He authorizes overtime and grants requests for time off. Jensen can establish policy or

programs for his area. For example, he set up a program for systematic inspections of homes in the City, which was a change from inspecting existing homes only when there was a complaint. He designated areas of the City and days to inspect the exterior of properties. Jensen developed this plan without approval from anyone, and he informed a

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committee of aldermen what the inspectors were about to do. He creates a budget for his department and turns it over to Jones, who takes it to the budget hearings. Jensen is present at those hearings. He asks for bids but does not enter into any contracts. He is appointed by the Mayor and confirmed by the Common Council.

The Chief Building Inspector has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

14. 12th Position - Assistant City Engineer/Traffic Engineer - Incumbent Eeg. The City contends that Eeg should be excluded from the bargaining unit because he is a supervisor.

Thomas Eeg has been the Assistant City Engineer/Traffic Engineer for eight months. Eeg has dual functions and reports to two different supervisors, Rick Jones at DPW and Jim Blazek, the City Engineer. As Assistant City Engineer, he works with traffic engineering and design, and as Traffic Engineer, he works with the traffic signals, the parking system, street lights, and the transit system. There are 12 people under him in the Traffic Engineering Division -- seven in the field office, four parking enforcement employes and a transit planner. The transit planner is in the Association unit, and the others are in other bargaining units. There are 11 shared employes on the City Engineering side of his job. Eeg is responsible for the operation and maintenance of traffic engineering services, the operation of the streets, the field work for the transportation office, and the parking operations. He has hired two parking enforcement employes by himself, and he was involved with the City Engineer in hiring one engineer and one technician. He has the authority to give oral and written reprimands but has not done so. He was previously an Assistant Traffic Engineer with the City, which was a position in the Association bargaining unit, but he did not have the same kind of authority over employes as in his present position. He has given 12 employes in the field operation performance evaluations. He has the authority to promote someone to a field operations supervisor position, a non-represented position. He would have to follow a union contract procedure to promote someone to a transit planner position. He conducts meetings with his subordinates several times a year, at least quarterly. He assigns work to employes and has changed work schedules for the parking enforcement employes. He established a policy whereby they have to use a time clock. He has issued several memoranda to parking enforcement personnel regarding such matters as work rules, schedules, vehicle maintenance, and the use of pepper spray. He authorizes overtime and grants requests for time off. He has not handled any grievances.

The Assistant City Engineer/Traffic Engineer has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

15. 13th Position - Civic Centre Administrator - Incumbent Weatherhead. The City contends Weatherhead should not be in the bargaining unit because she is a supervisor and/or a managerial employe.

Nancy Weatherhead has been the Civic Centre Administrator for three years. The Civic

Centre is made up of two rental facilities -- the Festival Park and Memorial Hall. There is a Civic Centre Commission, which is a volunteer board that sets policy for the facilities.

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Weatherhead is responsible for the overall operation of the Civic Centre, and she reports to the Mayor and the Civic Centre Commission. She has an assistant administrator, one clerical employe, a facility supervisor in charge of contracted employes who set up work and do janitorial services, and a cleaner. There are a number of services -- such as set-up and janitorial services, sound service, bar and beverage service, catering service, security, and grounds maintenance -- that are not provided by City employes but are contracted for with outside companies. The clerical employe is in the clerical unit, and the cleaner is in another unit, and the facility supervisor and the assistant are not represented. Weatherhead is part of the hiring process for Centre employes along with the Personnel Department and the Civic Centre Commission Chairman. She has disciplined the facility supervisor, giving him a verbal and written warning and a one-day suspension. She initiated all those disciplinary measures on her own authority. She gives performance evaluations to employes. The Mayor reviews her performance annually. Weatherhead would be the person to receive a grievance from the union employes at the Centre. She assigns work to employes, changes their work assignments, schedules their hours of work and changes those hours, authorizes overtime and grants requests for time off. She and her assistant administrator split up supervising activities during weekends, when many of the festivals are held in the summer.

Weatherhead recommends policies to the Civic Centre Commission which have to be endorsed by the Common Council. She does not determine policy or the kinds of services provided by the Civic Centre. She does not make changes in programs or policies without the Commission's approval. She proposes a budget by projecting revenue, the operational expenses, and capital outlays and expenditures. The budget is approved by the Commission and then goes to the Mayor and the Finance Director (Maller). She has to go through the Finance Committee to move funds or reallocate them from one area to another. She works with the Purchasing Agent (Fragale) in taking bids. The Chairman of the Commission and the Mayor sign contracts. She negotiates some of them with the City Attorney, and she can recommend changing vendors if she is unhappy with the services on a contractor. She does not attend the monthly administrative managers' meeting in the Mayor's office.

The Civic Centre Administrator has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

16. 14th Position - Assistant Civic Centre Administrator - Incumbent Felix. The City argues Felix should be excluded from the bargaining unit because she is a supervisor and/or a managerial employe.

Diana Felix has been the Assistant Civic Centre Administrator for two years and Weatherhead is her immediate supervisor. She is responsible for accounts receivable and accounts payable, and she assists the Civic Centre Administrator, Weatherhead, in supervising the contracted services and planning events. She trains and assigns work to the secretary. She is not involved in hiring employes. She has been involved in the disciplinary process, but only in Weatherhead's absence where she has given a one-day suspension to the facility supervisor after consulting with the Personnel Department. If Weatherhead had been working, Felix would have brought the

problem to Weatherhead's attention and Weatherhead would then take action. Felix has authority to act only in Weatherhead's absence. She has not given performance

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evaluations to employees and is evaluated herself by Weatherhead. Felix assigns clerical duties to the secretary and assigns duties to the facility supervisor as needed. She also assigns duties to the people who work for the outside contractors, people who are not City employees. In Weatherhead's absence, Felix completes work schedules and authorizes overtime and grants requests for time off. The summer months are the busiest for the festival site, and Felix and Weatherhead always see that one of them works on the weekend and has days off during the week. Felix has no involvement in the budget and does not develop or establish programs or policies.

The Assistant Civic Centre Administrator does not have supervisory duties and responsibilities in sufficient combination and degree to be a supervisor and she does not exercise sufficient control over the resources of the City or have sufficient involvement at a relatively high level of responsibility in the formulation, determination and implementation of management policy to be a managerial employee.

17. 15th Position - Senior Adult Program Supervisor - Incumbent Brenner. The City contends Brenner is a supervisor and/or a managerial employee.

For the last six years, Jeanne Lynn Brenner has been the Senior Adult Program Supervisor in the Cultural Services Division, a division of the Parks, Recreation and Cultural Services Department. She reports to two people -- Jeff McDorman, the Manager of Athletics, and Wendell Anderson, the Manager of Cultural and Special Services. She supervises senior adult clubs where senior citizens play cards and listen to educational speakers. There are senior adult clubs at the Humble Park Community Center, the Lakeview Community Center, the Martin Luther King Center, and Memorial Hall. She plans and coordinates trips for seniors and plans other senior adult club activities, such as dances, picnics and fairs. She also schedules softball and volleyball and old timers' softball programs, as well as the umpires and volleyball officials. She supervises eight part-time employees called senior adult leaders and four or five part-time pre-school teachers, all of whom are not in any bargaining unit. The senior adult leaders have clubs once or twice a week, with lunches or rolls and speakers, and the seniors usually play cards every day. The senior adult leaders order the food and make reservations for parties and take care of the needs of the club. At Memorial Hall, Brenner supervises one person who is a unit member and who runs the drop-in center at the Hall. Brenner schedules between 50 and 60 umpires and gets substitutes for them for the City's softball games. The umpires are paid by the City on a per game rate. There are about 40 volleyball officials, paid like the umpires. Brenner also supervises a part-time non-unit dance instructor. Brenner interviews applicants for pre-school teachers, senior adult leaders, umpires and volleyball officials, along with Anderson or McDorman. She has been involved in the hiring process about 10 times, and her recommendations have usually been accepted. She has issued a verbal and written reprimand to the unit member at Memorial Hall, with permission from her supervisor and a recommendation from the Personnel Department as to how to handle the situation. Brenner would be the first step in the grievance procedure in the union contract. The umpires are fined by their association for missing assignments. Brenner can take assignments away from them, which happens frequently toward the end of the season. Brenner evaluates the Memorial Hall employee. She assigns work, changes work assignments, schedules employees, changes hours of work, and authorizes overtime, but either McDorman or Anderson have to approve the overtime.

Brenner can call in extra staff and grant requests for time off.

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Brenner brings in educational speakers and sets up programs for speakers, such as fire safety and drug abuse. She has developed a line dancing class at Douglas Park Community Center, and is trying to get a nutrition site at Memorial Hall. She does not establish fees or propose a budget.

The Senior Adult Program Supervisor has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

18. 16th Position - Manager of Recreation - Incumbent Snow. The City contends Snow should be excluded from the bargaining unit because he is a supervisor and/or a managerial employe.

Donnie Snow has been the Manager of Recreation for the past seven years. Snow reports to Chuck Tyler, the Director of Parks, Recreation and Cultural Services. There are six community centers with recreation programs, and the City also has programs that are run with the Racine Unified School District. Snow is responsible for supervising and evaluating the six recreation supervisors at the centers. He is involved in hiring recreation supervisors by serving on an interviewing panel with Tyler and someone from the Personnel Department, usually William Dyess, the Affirmative Action Officer. Snow made recommendations as to which applicants should be hired for the positions, and his recommendations were accepted. He occasionally sits in on interviews with applicants for part-time positions in the Recreation Department. Snow has been involved in the disciplinary process that resulted in two terminations. He has issued verbal and written reprimands on his own authority, and can also suspend someone on his authority, although he works with the Personnel Department on disciplinary matters. Snow gives annual performance evaluations to the six recreation supervisors. He also has the authority to transfer employes, and he is the first step in the grievance procedure for Local 67 employes. He makes some assignments of work, but usually the recreation supervisors have a daily workload and Snow makes only specific assignments for special activities. Snow does not set the hours of work for the recreation supervisors, but their hours of work can be changed by him, although they usually work around certain events and determine their own schedules. Snow does not authorize overtime, as the recreation supervisors under him work on a salaried basis, but he grants them compensatory time off in an informal manner. He grants requests for time off and sick leave for them. He attends the meetings of the Cultural Services Commission.

Snow establishes programs such as GED and HSED programs, a high school equivalency degree that he brought into a community center facility. He sought permission from the City Council to get the money to establish this program because it was not in the budget. He wrote the proposal to solicit the funding and sought it from various agencies, ultimately getting the funding from the Private Industry Council. He also obtained funds from the Community Development Block Grant and the Weed and Seed program, and Gateway Technical College provided instruction with funds from its own source. He also helped develop a midnight basketball program. He has the authority to eliminate unsuccessful programs and implement alternatives, and to shorten or lengthen seasonal programs. Snow is involved in seeking grants and obtaining other sources of revenue. He writes policies for the department, such as how to handle requests for the use of facilities. He is involved in every step of the budget process,

submitting budgets for the six centers and playground programs and the beach program. He has to submit a budget for the capital improvement items and make recommendations to the City Council where the budget is ultimately approved.

The Manager of Recreation has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

19. 17th Position - Manager of Athletics - Incumbent McDorman. The City argues McDorman should be excluded from the bargaining unit because he is a supervisor and/or a managerial employe.

Jeff McDorman has been the Manager of Athletics for four years and he reports to Chuck Tyler, the Director of Parks, Recreation and Cultural Services. McDorman prepares the budget for recreation and supervises the senior adult program supervisor, Brenner. He deals with the school district in scheduling the use of their facilities, and the school district's use of City facilities. He directs the work of basketball officials, timer scorers, gym supervisors, umpires and volleyball officials, all of whom are either paid by the hour or on a per game basis. He makes sure that the game officials understand their duties, such as being on time, setting up and breaking down equipment and seeing that children are not climbing on the bleachers or hanging from the stage curtains, etc. He does not oversee any unit employes. He hires seasonal part-time employes, which involves working with Brenner and finding officials for games. He has hired hundreds of employes to work as officials for games. He has disciplinary authority over them when they miss assignments or do something inappropriate, including the independent authority to terminate employes. He disciplines employes about once a month. He gives a performance evaluation to Brenner, and he authorizes compensatory time off for her. He can see that the game officials get certain "perks" of the job, like working the top leagues or certain preferred sites. McDorman has no involvement with grievances. He attends weekly meetings with other managers, such as Snow. He assigns work and schedules officials for special events. He estimated that he spends 85 percent of his time supervising people under him, including Brenner.

McDorman can make changes in the way athletic programs are run. He established a double first base for slow pitch softball and changed some of the penalties for ejecting players. He changed the rules regarding the arc limit of pitches, the type of slow pitch ball, and the number of runs after certain innings. He has modified policies such as having a player ask for a hearing after getting ejected if the player is suspended for 30 days or longer. The Parks, Recreation and Commission has to approval such changes. The Commission is composed of two aldermen, one person from the school district, one person from the County Board of Supervisors, and some community members. McDorman has improved the ball diamond drainage by getting dirt from an excavation site, and has continued to work on improving the drainage. McDorman started meetings for the managers of the softball teams, volleyball teams and basketball teams. The Department collects fees from players and sponsors for all adult sports, and McDorman helps determine the level of fees. The Commission has to approve of the fees. McDorman can change fees, and he doubled the team fee for softball and basketball and doubled the player fees in the last four years. The fees were raised because the Mayor wanted the adult sports programs to be self sufficient from the user fees. McDorman creates

an operating and capital improvement budget, which goes to Tyler before it goes to the Commission, then to the Finance Committee.

The Manager of Athletics has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

20. 18th Position - Cemetery Manager - Incumbent Schuster. The City contends that Schuster should be excluded from the bargaining unit because he is a supervisor and/or a managerial employe.

Eugene Schuster has been the Cemetery Manager since 1978. He reports to a Cemetery Commission comprised of five citizens, one alderman and four citizens at large. He also reports to the Director of Parks and Recreation and to Jack Schumann who is the Assistant Parks and Recreation Director. Schuster deals with Schumann on building problems, building construction, architectural matters, etc. He also deals with Wendell Anderson, the Manager of Cultural Services, on political type matters. The City operates two cemeteries in two locations. There is one office with a part-time clerk, a member of Local 2239, AFSCME, who works 24 hours a week in the office. Schuster is also on the rotating on-call list for the Parks Department and could be called if emergencies came up on his on-call time. He would then determine whether he has to call in a crew to fix something or wait until normal working hours. He is the on-call person about every six weeks over the weekend period. If he has to call in employes to help, he would typically be calling in Local 67, AFSCME bargaining unit members and supervise their work. Schuster works with funeral directors, monument dealers and families to see that burials are performed correctly. He meets the funeral processions at the gate and escorts them to the correct grave site. He sells graves as needed and cares for the financial records, correspondence, and perpetual care activities' irrevocable trust fund.

Schuster works with Personnel Director James Kozina in hiring the part-time office clerk, and there has been a lot of turnover of the clerk's position. He has the authority to discipline the clerk, and he gives her an annual evaluation. He would be a step in the grievance procedure if she filed a grievance. He assigns work to her and may authorize overtime for her. Her regular hours are set by a labor contract. Schuster also grants time off for sick leave and vacation for her. When other City employes, such as Local 67 employes from the Parks Department, work in the cemeteries, Schuster does not have supervisory authority over them, and they would report to their direct supervisor. If Schuster saw that they were doing something incorrectly, he would report it to their supervisor. Schuster does not attend regular supervisory or management meetings, except for meetings regarding snow removal operations that relate to his on-call duties.

Schuster determines policies and procedures for the cemeteries. He determines how a grave is set up, how a burial is conducted with or without the family, how the paperwork and office work is processed, and he writes all the correspondence. He generally does not discuss his decisions with the Cemetery Commission in advance. He does not change fees for graves, crypts, interment charges, foundations, government marker foundations by himself but he makes recommendations to the Commission who presents it to the Common Council. The Council establishes the prices. Schuster creates and submits a budget of about \$360,000 for wages and

expenses for an outside contractor, who digs graves, closes graves, cuts grass, trims trees, plows snow, all the outside work. Schuster does not select the contractor, although he originally helped set up the specifications for the contract. He reviews and revises the specifications when the contract comes up for renewal and contacts the Purchases Department, the City Attorney's office, and Schumann, Anderson and Tyler in the Parks Department to make everyone aware of changes. He also enters into contracts on each burial that is made through the County's Human Services Department.

The Cemetery Manager exercises sufficient control over the resources of the City and has sufficient involvement at a relatively high level of responsibility in the formulation, determination and implementation of management policy to be a managerial employe.

21. 19th Position - Manager of Cultural Services - Incumbent Anderson. The City argues Anderson is a supervisor and/or a managerial employe.

Cultural Services encompasses parks, recreation, arts, pre-school programs, senior adult programs, the municipal band, a naturalist program, etc. Wendell Anderson has been the Manager of Cultural Services for 11 years. Anderson administrates, supervises, and manages all of the personnel in the Cultural Services Division of the Parks, Recreation and Cultural Services Department. He has a wide variety of duties. He is responsible for marketing, advertising, and public relations for the department, and maintains all of the audio visual equipment for the department. He handles requests for signs in the parks, requests for manpower and equipment, snow fences and special events. He is responsible for the Main Gallery program, and an artistic program that trains young people on artistic projects. Anderson is the liaison for the Wustum Museum, the zoo and the cemeteries and oversees their budgets and contracts. The zoo is contracted out by the City to the Zoological Society, and Anderson worked with the Common Council on that contract. The City is the landlord and maintains the infrastructure at the zoo, and Anderson sees that capital improvements are carried out, such as sidewalks and tuck pointing of a building. The City is the landlord of the Wustum Museum, and Anderson has to see that it is plowed in the winter and that the building is otherwise maintained.

Anderson supervises Brenner and has been working with her on new programs such as the nutrition program. He manages her personnel in her absence. He is also a supervisor of Peggy Clark, who works under Brenner as the senior adult program coordinator. He gives a performance evaluation to Schuster, the Cemetery Manager. He oversees many part-time employes such as the director of the Main Gallery program, the municipal band director, all the band members, the sound technician, ice rink helpers. He has hired both Brenner and Clark and the people who previously held those positions, in conjunction with the Personnel Department. He delegates the hiring of part-time employes to the person responsible for the program. For example, the ice rink supervisor would hire the part-time employes who work on the ice rinks, and Brenner would hire the part-time senior adult program leaders and pre-school teachers. They would have to have Anderson's approval. He has the authority to discipline employes and can give oral and written reprimands. He would clear a suspension with Chuck Tyler, the Director of Parks, Recreation and Cultural Services. He has discharged part-time employes without authorization from Tyler. He has only disciplined part-time employes approximately

three times in the last five years. He can promote part-time employees from one pay range to the next. After Brenner, he would be the next step in the grievance procedure for Clark, who is in the clerical unit. He attends weekly management staff meetings with the Manager of Athletics (McDorman), the Manager of Recreation (Snow) and the Manager of Parks and the Director of Parks and Recreation (Tyler). He assigns work to employees and establishes their hours of work and changes their schedules. He does not authorize overtime. He grants requests for time off. He shares the supervisory authority over Brenner with McDorman.

Anderson has developed policies related to signs in parks, use of the stage on wheels, and requests for cultural services. He can change policies but would usually clear a change through Tyler or the Parks, Recreation and Cultural Services Commission. He can determine what activities will take place in cultural services. He is responsible for the budget for the senior adult program, the equipment, the capital improvement program for the museum and the zoo, and he works with McDorman and Schuster on budgets for capital improvements. His budget then goes to Tyler, and he sits in on the managerial budget sessions with the Finance Director (Maller) and the Mayor before they take it to the Council. He makes recommendations to aldermen on the budget. He also enters into concession contracts with the boat launch, Horlick Athletic Field, North Beach, Pershing Park and works with the contractors and monitors those contracts.

The Manager of Cultural Services exercises sufficient authority to commit the City's resources to be a managerial employe.

22. 20th Position - Recreation Supervisor II - Incumbent Strasburg. The City contends Strasburg is not eligible for inclusion in the bargaining unit because he is a supervisor and/or a managerial employe.

Charles Strasburg has been the Recreation Supervisor II at the Douglas Park Community Center for about 20 years, although the title was changed from Center Director to Recreation Supervisor about 11 years ago. He organizes and develops programs for the center, and hires and trains the staff that put on those programs. He hires umpires, timer scorers, basketball and softball officials, and he trains them. He prepares schedules for games, recruits volunteers, and counsels young people. He is responsible for the summer playground program and the drop-in playground. His supervisor is Donnie Snow, the Manager of Recreation. There are no full-time employees under Strasburg's supervision, and about 10 regular part-time employees. The part-time employees work on an hourly basis and supervise game rooms, gymnasiums and programs. Strasburg hires about two or three employees a year for the Center, and up to 32 people who work for nine weeks at the playgrounds. There are two employees who work 35 hours a week for those nine weeks who go around and oversee the playground operations. In addition to the 10 part-time employees at the Center, there are about 30 timers, scorers, officials. Strasburg hires most of these individuals by himself and gives Snow a list of the people he has hired. He has the authority to give both verbal and written reprimands as well as suspensions and terminations and has issued all of those types of discipline. He has had to discharge three or four employees. He does not give formal performance evaluations to employees but gives them direction and evaluates them at the end of the summer. He can promote employees, for example, from playground leader to a leader that supervises a number of playgrounds. He can transfer

people from one program to another. He meets with other Recreation Supervisors and Snow every two weeks. He assigns work and often changes work assignments. He establishes hours of work and frequently changes those hours.

Strasburg develops programs and special events for the playgrounds and the Center and changes them. He does not establish fees. His involvement in the budget process is limited to trying to restructure it from the prior year to meet the needs for the current year. He administrates \$127,000 for his Center, and the playgrounds use another \$80,000. He gives his budget requests to Snow. He does not enter into any contracts, including the contracted service for custodial work at the center. He has written applicants for community grant block monies for playgrounds. Much of his time is spent in planning, organizing and coordinating daily and special events, as well as in training seasonal people.

The Recreation Supervisor II (Incumbent Strasburg) has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

23. 21st Position - Recreation Supervisor II - Incumbent Henry. The City contends that Henry is a supervisor and/or a managerial employe.

Sue Henry has been the Recreation Supervisor at the Lakeview Community Center for 11 years. Her overall duties are similar to those of Strasburg noted above in Finding of Fact 22. She is at the smallest center, but one that has the City's lifeguard program in the summer. There is one full-time employe at the Center, a member of the Local 67, AFSCME bargaining unit, and three regular part-time employes. The staff is there to watch over children using the Center's facilities. Henry directs the Racine Special Olympics program. She has the responsibility for 15 to 20 life guards in the summer. She hires life guards along with another Recreation Supervisor, Ray Hammermann, and hires other part-time employes on her own. The full-time employe has been at the Center since she came and if that person left, the job would be posted within Local 67. She has the authority to discipline employes but has not given any discipline to the full-time employe except verbal counseling. She has given verbal reprimands and suspensions to part-time people. She gives performance evaluations to the Center's full-time employes and gives evaluations to life guards mid season and at the end of the year. She can reward and promote the life guards by giving them assignments as assistant supervisors. She can transfer part-time employes to certain areas, different beaches or pools. She cannot transfer the full-time employe. She is not a step in the grievance procedure if the Local 67 employe had a grievance, and she does not grant his vacation requests. The Local 67 employe would check with her for his vacation time but get it approved through the Parks Department, because vacations are given on a seniority basis. Henry attends the staff meetings with Snow and the other center supervisors. She assigns work, changes work assignments, establishes hours of work, and authorizes overtime.

Henry established the handicap program and developed policies, such as the life guard manual and policies for the Special Olympics program. She developed policies for the Special Olympics program that had to be approved by the Wisconsin Special Olympics program but not by the City. She would take a new program to her supervisor, Snow, and then proposals go to Tyler and finally the Parks and Recreation Commission. A youth advisory committee assists

Henry in establishing Center programs. Her role in the budget process is similar to Strasburg's, in that they work within their budgets and request increases from Snow. Henry does not take bids or enter into contracts or establish fees.

The Recreation Supervisor II (Incumbent Henry) has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

24. 22nd Position - Recreation Supervisor II - Incumbent Wilson. The City argues Wilson should not be in the bargaining unit because he is a supervisor and/or a managerial employe.

James Wilson has been the Recreation Supervisor at the Martin Luther King Community Center for two and a half years. There is one full-time custodian, a member of the Local 67 unit, at the Center. There are 12 regular part-time people to oversee programs and game rooms. Wilson's authority over the Local 67 member is the same as Henry's, with the custodian reporting to the Parks Department for final approval of vacation, etc. Wilson has the authority to hire part-time employes on his own, and he has done that four or five times. He has given verbal and written reprimands on about three occasions. He gives a performance evaluation to the full-time custodian and informally evaluates the part-time staff. Wilson can promote or reward employes and has done so, by moving a community center specialist to community center supervisor. He assigns work, changes assignments, determines the hours of work, and authorizes overtime.

Wilson has developed a program called ESL, or English as a second language. He ran the idea past his supervisor, Snow, and went ahead with the program through Gateway Technical College. Another program he has been involved with is anger and stress management. He can change and modify the programs and determine the activities at the Center. His involvement in the budget process is similar to that of Strasburg and Henry. He has submitted a proposal for money for a play and a proposal for money to take a group of children to the Civil Rights Museum in Memphis, Tennessee. He also submitted a proposal to extend hours on the weekend at the Center.

The Recreation Supervisor II (Incumbent Wilson) has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

25. 23rd Position - Recreation Supervisor II - Incumbent Hammermann. The City contends Hammermann should not be in the bargaining unit because he is a supervisor and/or a managerial employe.

Ray Hammermann has been the Recreation Supervisor at the Humble Park Community Center for 10 years. His supervisor is Donnie Snow. Hammermann is in charge of a variety of recreational programs for children and seniors, and is heavily involved with youth sports programs such as softball and basketball. He works with Henry in supervising the beaches and lifeguards. There are no full-time employes at the Humble Park Center and the custodial service is contracted out. There are 7 - 10 part-time employes, such as pre-school teachers and senior leaders. There are also about 6 - 10 umpires for the softball season, and 15 youth officials for

basketball, as well as some adult officials, timer scorers and gym supervisors. Hammermann hires the part-time staff by himself. He hires lifeguards along with Henry, and hires youth officials and umpires with Strasburg. Hammermann has the authority to give verbal and written reprimands and has done so. He can decide to deny work to game officials who are not doing a good job. He does not give written annual performance evaluations to the part-time staff, but he gives a mid-year and final-year evaluation to lifeguards. Hammermann transfers people between locations and can promote them by giving them a position that increases their pay. Both he and Henry decide which lifeguards will be supervisors, which is also a step up in pay. He assigns work to employes and frequently changes assignments. He sets their schedules and changes their hours of work. He does not authorize overtime.

Hammermann develops programs such as a basketball program, an aerobics program, an Easter egg hunt, and arts and crafts programs. He can develop such programs on his own initiative and without approval from Snow. He sets policies for such matters as having the staff be on time, working the correct areas, filling out forms, and documenting accidents. He developed a budget for the Center and the youth softball league and basketball league, and works with Henry on the budget for lifeguards and equipment. His recommendations then go to Snow. He does not establish fees or change them.

The Recreation Supervisor II (Incumbent Hammermann) has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

26. 24th Position - Recreation Supervisor II - Incumbent Reece. The City argues Reece is a supervisor and/or a managerial employe.

Morris Reece has been the Recreation Supervisor at the Dr. John Bryant Community Center for 10 years. There is one full-time employe at that Center, a custodian who is a member of the Local 67 AFSCME bargaining unit. There was a second full-time employe who recently retired, and the City does not intend to replace him. The City has discussed contracting out the custodial services for that position. There are 8 - 10 part-time employes involved in recreational duties. Reece hires those part-time employes by himself. Reece has also independently disciplined employes, up to and including terminations. He gives a performance evaluation to the full-time employe and has given evaluations to some part-time employes. He is not the first step in the Local 67 contract's grievance procedure. Reece authorizes overtime for the full-time employe. He also assigns work, changes assignments, and establishes the hours of work except for the full-time employe.

Reece has established homework assistance programs and a dental screening program. He can change policies regarding tardiness or working conditions. His involvement in the budget process is similar to other Recreation Supervisors. He has been involved with the Department in establishing fees for rental purposes, although he does not establish rental fees on his own authority. He has not been in charge of obtaining a subcontractor for the custodial work.

The Recreation Supervisor II (Incumbent Reece) has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

27. 25th Position - Recreation Supervisor II - Incumbent Molbeck. The City asserts Molbeck should be excluded from the bargaining unit because he is a supervisor and/or a managerial employe.

Tom Molbeck has been the Recreation Supervisor at the Washington Park Community Center for two years. There is one full-time custodian assigned to the Center, a member of the Local 67 unit, and 10 - 12 part-time employes who are building supervisors. There is also a full-time clerical employe at the Center, a member of a Local 2239 unit. Molbeck has been involved in hiring the part-time employes on about three occasions. He and Strasburg hire about 23 leaders for the "Kiddy Corner" teacher program, and these employes work about 36 hours a week for nine weeks in the summer. Molbeck has issued verbal and written reprimands and a suspension to one part-time employe, and issued a written reprimand to another person. He gives the full-time custodian an annual performance evaluation and grants vacation time for the custodian. He assigns work, he can change work assignments, and he establishes the hours of work for part-time employes. The hours of work for the full-time custodian are established by contract. Molbeck authorizes overtime for the custodian.

Molbeck has helped revise a policy for employes to punch in and out, be on time, stay in their assigned areas, and a policy on first aid procedures. There is a monthly fee for the story hour program for supplies, and Molbeck has the authority to change that fee depending on what supplies are needed. His involvement in the budget process is similar to that of the other Recreation Supervisors.

The Recreation Supervisor II (Incumbent Molbeck) has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

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

CONCLUSIONS OF LAW

1. The Assistant Finance Director/Assistant Treasurer (Incumbent DeBonis) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. The Purchasing Manager (Incumbent Fragale) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. The Library Head of Circulation (Incumbent Margis) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

4. The Library Head of Children's Services (Incumbent Mohr) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

5. The Library Head of Adult Services (Incumbent Hartmann) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

6. The Library Head of Technical Services (Incumbent Nortstrom) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

7. The Library Business Manager (Incumbent Schultz) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

8. The Library Computer Technician (Incumbent Fischer) is not a professional employe within the meaning of Sec. 111.70(1)(L), Stats., and is appropriately excluded from the bargaining unit.

9. The Benefits Coordinator (Incumbent Anastasio) is not a confidential 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.

10. The Assistant Commissioner of Public Works (Incumbent Haas) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

11. The Chief Building Inspector (Incumbent Jensen) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

12. The Assistant City Engineer/Traffic Engineer (Incumbent Eeg) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

13. The Civic Centre Administrator (Incumbent Weatherhead) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

14. The Assistant Civic Centre Administrator (Incumbent Felix) is not a managerial employe within the meaning of Sec. 111.70(1)(i), Stats. and is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

15. The Senior Adult Program Supervisor (Incumbent Brenner) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

16. The Manager of Recreation (Incumbent Snow) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

17. The Manager of Athletics (Incumbent McDorman) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

18. The Cemetery Manger (Incumbent Schuster) is a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

19. The Manager of Cultural Services (Incumbent Anderson) is a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

20. The Recreation Supervisor II (Incumbent Strasburg) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

21. The Recreation Supervisor II (Incumbent Henry) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

22. The Recreation Supervisor II (Incumbent Wilson) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

23. The Recreation Supervisor II (Incumbent Hammermann) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

24. The Recreation Supervisor II (Incumbent Reece) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

25. The Recreation Supervisor II (Incumbent Molbeck) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Benefits Coordinator and Assistant Civic Centre Administrator shall be included in the bargaining unit represented by the Association, and the remainder of the positions/employees at issue in this proceeding shall continue to be excluded from the bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of September, 1997.

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

CITY OF RACINE

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

With the exception of the Library Computer Technician, the City contests the Association's effort to include the disputed positions in the Association unit because it believes the incumbents are supervisor and/or managerial or confidential employees. We will set forth the standards for those exclusions here before the consideration of individual positions. We will discuss the standards for professional employe status when we consider the Library Computer Technician.

Supervisors

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

. . . 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.

The factors that we focus on in evaluating claims of supervisory status under Sec. 111.70(1)(o)1, Stats. are the following:

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 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/her skills or for his/her supervision of employes;

Whether the supervisor is 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 employes; and

7. The amount of independent judgment exercised in the supervision of employes. 1/

The Commission has consistently held that not all of the above factors need to be present, but if the factors appear in sufficient number and degree, the Commission will find an employe to be a supervisor. 2/ Even an employe who spends a majority of his/her time doing non-supervisory duties may be determined to be a supervisor where sufficient responsibilities and authority of a supervisor are present. 3/

Managerial Employes

While the Legislature has excluded "managerial employes" from the definition of "municipal employes," it did not provide a statutory definition of managerial employes and thus left it to the Commission to develop the precise definition. 4/ 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 individuals possess the authority to commit the employer's resources. 5/

For an individual to assume managerial status based on participation in program and policy, such involvement must be at a relatively high level of responsibility. 6/ Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of an employer's operations, such as the kind and level of services to be provided, or the kind and number of employes to be used in providing services. 7/

Confidential Employes

For an employe to be held confidential, such employe must have access to, knowledge of, or participation in confidential matters relating to labor relations. For information to be confidential, it must: (a) deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (b) be information which is not available to the bargaining representative or its agents. 8/

While a *de minimis* exposure to confidential matters is generally insufficient grounds for exclusion of an employe from a bargaining unit, 9/ we have also sought to protect an employer's right to conduct its labor relations through employes whose interests are aligned with those of management. 10/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employe may be found to be confidential where the person in question is the only one available to perform legitimate confidential work, 11/ and similarly, where a management employe has significant labor relations responsibility, the clerical employe assigned as his or her secretary may be found to be confidential, even if the actual amount of confidential work is not significant, where the confidential work cannot be assigned to another employe without undue disruption of the employer's organization. 12/

The Commission has held that the physical proximity of confidential and non-confidential employes or the effect of a finding of a confidential status or a non-confidential status on the sociometry of the work place are not appropriate considerations in making a determination of whether employes are confidential employes. 13/

1st Position - Assistant Finance Director/Assistant Treasurer - Incumbent DeBonis:

The record shows that DeBonis has made effective recommendations in hiring and has given performance evaluations to employees. He has other supervisory authority, such as the assignment of work, authorization of overtime, granting time off, and recommending employees for promotion. While he has not exercised any disciplinary authority, he has the authority to effectively recommend discipline. He has direct supervisory responsibility for at least five employees.

Because the record convinces us that this position has sufficient supervisory authority to be excluded from the bargaining unit as a supervisor, we will not address the confidential or managerial status of this position.

2nd Position - Purchasing Manager - Incumbent Fragale

We are satisfied Fragale is a supervisor based on his hiring and disciplinary authority, his evaluation of employees and his independent authority to direct employee work.

Given our conclusion, we need not address his managerial or confidential status.

3rd Position - Head of Circulation - Incumbent Margis

In considering an employee's supervisory authority, it is appropriate to consider the exercise of supervisory authority over both bargaining unit and non-bargaining unit employees. See CITY OF LAKE GENEVA, DEC. NO. 18507 (WERC, 3/81). Margis has a great deal of supervisory authority and exercises it frequently over part-time employees, even though some are only high school students. He hires, disciplines, evaluates, assigns work, checks work, authorizes overtime, grants requests for time off, etc. There is little doubt that he holds sufficient supervisory authority as to be excluded from the bargaining unit, and thus we need not determine his managerial status.

4th Position - Library Head of Children Services - Incumbent Mohr

The record shows that Mohr meets the major criteria for supervisory status. She has the authority to hire, discipline, evaluate employees, and she assigns them work, changes assignments and schedules and hours of work, authorizes compensatory time off and grants leave requests. Although she has never used her disciplinary authority, she has not been in her position very long. Because we would exclude her as a supervisor, we need not determine the managerial status of the position.

5th Position - Library Head of Adult Services - Incumbent Hartmann

Hartmann is another department head in the Library with significant supervisory authority to hire, discipline and evaluate employees, as well as to assign them work and authorize time off and overtime. Because we exclude her position as a supervisor, we need not address her managerial status.

6th Position - Library Head of Technical Services - Incumbent Nortstrom

Nortstrom has sufficient supervisory authority in the areas of hiring, evaluating and disciplining employees to be a supervisor. She has hired part-time employees on her own, issued oral reprimands, and independently given annual evaluations. We need not address the managerial contentions because we have excluded her as a supervisor.

7th Position - Library Business Manager - Incumbent Schultz

Schultz is a supervisor because he hires part-time employees on his own, issues oral reprimands and has the authority to issue written reprimands, independently evaluates employees and assigns work to them. We need not address the City's managerial contentions since we deem Schultz to be a supervisor.

8th Position - Library Computer Technician - Incumbent Fischer

The City asserts that Fischer is not a professional employee and thus is not appropriately included in this bargaining unit. The statutory definition of a professional is set forth in Sec. 111.70(1)(L), Stats., as follows:

(L) "Professional employee" means:

1. Any employee engaged in work:
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employee who:
 - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d.;
 - b. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in subd. 1.

All the criteria found either in section 1 or 2, above, must be present in order to find that a particular employe is professional. MILWAUKEE COUNTY, DEC. NO. 14786-B (WERC, 4/80). The statute does not require that the professional employe possess a college degree. MILWAUKEE COUNTY, DEC. NOS. 8975, 13487 (WERC, 6/76).

The Library Computer Technician does not meet all of the criteria in either 1 or 2 of the statute. Fischer correctly described his work as more routine and technical than intellectual and varied. While he has some instruction and course work and educational background, it was his prior work experience in computers that qualified him for this position, not any course of specialized instruction. In fact, his educational background is in accounting, not computer science. Fischer is not performing work under the supervision of a professional employe in order to qualify to become a professional employe.

While Fischer may be eligible to be included in another bargaining unit, he is appropriately excluded from the petitioning bargaining unit because he is not a professional employe. 14/

9th Position - Benefits Coordinator - Incumbent Anastasio

Anastasio does not meet the criteria to be deemed a confidential employe at this time. She has not dealt with any confidential matters relating to labor relations, such as the City's strategy or position in bargaining or litigation or grievance handling. She has not dealt with any information which is not available to the unions. While there have been no contract negotiations going on during the seven months Anastasio has been working for the City, there have been grievances handled by the Personnel Director and other confidential employes. The intention to use Anastasio in the future to cost the impact of proposals in the benefits area would not in and of itself be sufficient to deem her a confidential employe. For instance, it is unknown whether the City would be having her cost proposals which are not available to the unions.

10th Position - Assistant Commission of Public Works - Incumbent Haas

Haas' authority in the areas of hiring, discipline, evaluations, and the direction and assignment of the work force are sufficient to establish his status as a supervisor. Thus, we need not determine whether he is also a confidential employe and/or a managerial employe.

11th Position - Chief Building Inspector - Incumbent Jensen

Jensen supervises eight employes -- he is significantly involved in hiring, discipline, evaluating employes and assigns and directs the work force. Because he is excluded from the unit as a supervisor, we need not resolve his managerial status.

12th Position -- Assistant City Engineer/Traffic Engineer - Incumbent Eeg

The occupant of this position is clearly a supervisor. Eeg hires some people on his own authority, he has the authority to discipline employes, he evaluates their job performance, he makes work rules and assigns work, changes schedules, authorizes overtime and grants requests for time off. While his position was formerly in the unit, it is a different position now and he has greater authority over personnel which warrants his exclusion from the bargaining unit.

13th Position -- Civic Centre Administrator - Incumbent Weatherhead

The record shows the supervisory elements of involvement in the hiring of employees, substantial disciplinary authority, evaluation of employees, as well as the direction of the work force and assignment of duties, hours, the authorization of overtime and the granting of requests for time off. Weatherhead is a supervisor and thus we need not determine whether she is also a managerial employee.

14th Position - Assistant Civic Centre Administrator - Incumbent Felix

The only significant indicia of supervisory authority is the fact that Felix was involved with a one-day suspension of the facility supervisor. However, this only occurred because of the absence of her supervisor - as well as the employee's direct supervisor -- Weatherhead. Felix did not issue the suspension on her own but went through the Personnel Department first. The occasional assumption of supervisory authority in the absence of another supervisor does not warrant a supervisory exclusion. MARINETTE COUNTY, DEC. NO. 26154-B (WERC, 3/92); CITY OF NEW BERLIN, DEC. NO. 13173-B (WERC, 8/83); CITY OF LACROSSE, DEC. NO. 14019 (WERC, 10/75); AND CITY OF FRANKLIN, DEC. NO. 6147 (WERC, 10/62).

Weatherhead has the direct supervisory responsibility for the employees at the Civic Centre.

We also note that any claimed supervisory involvement with and authority over independent contractors overlooks a basic premise reflected in both the statute and Commission case law -- that supervisory status cannot be found through the supervision of non-employees. See JACKSON COUNTY, DEC. NO. 17828-E (WERC, 3/91); ST. CROIX COUNTY, DEC. NO. 11179 (WERC, 7/72); AND WOOD COUNTY, DEC. NO. 13760 (WERC, 6/75).

There is nothing in the record that would warrant an exclusion from the bargaining unit for managerial status, and accordingly, we have ordered that this position be accreted to the bargaining unit.

15th Position - Senior Adult Program Supervisor - Incumbent Brenner

Brenner's supervisory authority extends primarily over the various part-time employees who function as senior adult leaders, pre-school teachers, umpires, etc. Brenner has sufficient supervisory authority to be excluded from the bargaining unit as a supervisor based on her role in hiring, discipline, and directing the work of these employees.

Given our conclusion, we need not resolve her alleged managerial status.

16th Position - Manager of Recreation - Incumbent Snow

Snow hires, disciplines, and evaluates employees and is a step in the grievance procedure. He supervises six recreation supervisors and has the authority to grant them compensatory time off in an informal manner, to grant requests for time off, to assign special duties to them and to evaluate their performance. Because Snow is excluded from the bargaining unit based on his supervisory status, we need not determine whether he is also a managerial employee.

17th Position - Manager of Athletics - Incumbent McDorman

McDorman has independent hiring and disciplining authority which is clearly sufficient to establish his supervisory status. Thus, we need not determine whether he is also a managerial employe.

18th Position - Cemetery Manager - Incumbent Schuster

Schuster effectively establishes policy and procedure for the cemeteries and has significant authority to commit the City's resources in carrying out his functions. Therefore, he is a managerial employe and we need not resolve his supervisory status.

19th Position - Manager of Cultural Services - Incumbent Anderson

Anderson has a high level involvement in the budget process for the cultural services division, and his responsibilities encompass a wide range of matters, from the cemeteries to the museum to the zoo, as well as the senior adult and pre-school programs. He holds the kind of managerial authority that can change policies and programs. He has responsibility for capital improvements in many areas and enters into concession contracts. He has sufficient control over the City's resources to be deemed a managerial employe. Thus, we need not resolve his alleged supervisory status.

20th Position - Recreation Supervisor II - Incumbent Strasburg

Strasburg has the authority to hire and discipline and evaluate many part-time seasonal staff, as well as some regular part-time employes. He has other supervisory authority such as assigning work, scheduling employes, changing assignments and hours of work. We exclude him as a supervisor and thus need not resolve his alleged managerial status.

21st Position - Recreation Supervisor II - Incumbent Henry

This position is similar to the previous one, except that Henry has one full-time bargaining unit member to supervise and a different component of part-time people -- three regular part-time and 15 to 20 life guards during the summer. Henry showed some uncertainty regarding her authority to supervise the full-time Local 67 custodian, preferring to defer to the Parks supervisors in his supervision. However, she clearly has supervisory authority over the part-time and seasonal employes. She has the authority to hire and discipline, evaluate and assign work, etc. We deem her to be a supervisor and thus need not resolve her managerial status.

22nd Position - Recreation Supervisor II - Incumbent Wilson

Wilson has the same major components of supervisory indicia as Strasberg and Henry -- the authority to hire, discipline and evaluate employes, as well as assign work, schedule, change assignments, authorize overtime, etc. He is a supervisor and will continue to be excluded from the bargaining unit. Given our conclusion, we need not determine whether he is also a managerial employe.

23rd Position - Recreation Supervisor II - Incumbent Hammermann

Although Hammermann shares the oversight of lifeguards with Henry and shares the oversight of some game officials and umpires with Strasburg, he has sufficient indicia of supervisory status in the areas of hiring, disciplining and evaluating employees. Additionally, we note that he has the authority to promote and reward employees by giving them better assignments that increase their pay. He is a supervisor and thus we need not determine his alleged managerial status.

24th Position - Recreation Supervisor II - Incumbent Reece

Reece has the same kind of supervisory responsibilities as the other Recreation Supervisors, including substantial authority to hire, discipline, and evaluate. He is a supervisor and excluded from the bargaining unit. Thus, we need not resolve his alleged managerial status.

25th Position - Recreation Supervisor II - Incumbent Molbeck

There is little difference in the level of supervisory authority between any of the Recreation Supervisors. They run different centers, have different numbers and types of full-time and part-time employees, but they all essentially have the supervisory authority to hire, discipline, evaluate, as well as assign and direct the work force. Molbeck is no different. His position is excluded from the bargaining unit as supervisory.

Conclusion

In sum, most of the positions sought by the Association have been found to be appropriately excluded from the unit on the basis of supervisory or managerial status. We have excluded the position of Library Computer Technician on the basis that he is not a professional employee eligible for this bargaining unit. We have found the positions of Benefits Coordinator and the Assistant Civic Centre Administrator to be appropriate for inclusion in the bargaining unit and have so ordered.

Dated at Madison, Wisconsin, this 26th day of September, 1997.

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

- 1/ CITY OF MILWAUKEE, DEC. NO. 6960-J (WERC, 5/89).
- 2/ CITY OF LAKE GENEVA, DEC. NO. 18507 (WERC, 3/81).
- 3/ CITY OF MADISON (PUBLIC LIBRARY), DEC. NO. 19906 (WERC, 9/82); SCHOOL DISTRICT OF MONTELLO, DEC. NO. 17829-B (WERC, 2/82).
- 4/ VERNON COUNTY, DEC. NO. 13805-B (WERC, 4/91).
- 5/ MILWAUKEE V. WERC, 71 WIS.2D 709 (1976); EAU CLAIRE COUNTY V. WERC, 122 WIS.2ND 363 (CT.APP. 1984).
- 6/ VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88); PORTAGE COUNTY, DEC. NO. 6478-C (WERC, 10/87); DOOR COUNTY (COURTHOUSE), DEC. NO. 24016-B (WERC, 8/88).
- 7/ VILLAGE OF JACKSON, SUPRA; FOREST COUNTY, DEC. NO. 17528-B (WERC, 6/85); JACKSON COUNTY, DEC. NO. 17828-B (WERC, 10/86); CITY OF WHITEWATER, DEC. NO. 24354 (WERC, 3/87).
- 8/ DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88).
- 9/ BOULDER JUNCTION JOINT SCHOOL DISTRICT, DEC. NO. 24982 (WERC, 11/87).
- 10/ CESA AGENCY NO. 9, DEC. NO. 23863-A (WERC, 12/86).
- 11/ TOWN OF GRAND CHUTE, DEC. NO. 22934 (WERC, 9/85).
- 12/ HOWARD-SUAMICO SCHOOL DISTRICT, DEC. NO. 22731-A (WERC, 9/88).
- 13/ MARSHFIELD JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 14575-A (WERC, 7/76); WEST SALEM SCHOOL DISTRICT, DEC. NO. 22514-A (WERC, 8/89).
- 14/ We note that Union Exhibit #52, which was introduced to show that other positions with job descriptions similar to Fischer's are included in the bargaining unit, is not relevant in this proceeding. Those other positions are not before us. We only determine whether this employe is a professional employe or not. Similarly, Union Exhibit #53, which was introduced to show that a position with certain supervisory authority is included in the bargaining unit, is likewise not relevant in this proceeding. We do not need to determine whether or not the incumbent of the position described in the job description in the exhibit is appropriately included in the bargaining unit.

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