

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 WISCONSIN PROFESSIONAL POLICE :
 ASSOCIATION/LEER DIVISION : Case 52
 : No. 47845 ME-594
 Involving Certain Employes of : Decision No. 24844-C
 :
 ONEIDA COUNTY (COURTHOUSE) :
 :

Appearances:

Cullen, Weston, Pines & Bach, Attorneys, 20 North Carroll Street,
 Madison, Wisconsin 53703, by Mr. Richard Thal, appearing on behalf of
 the Union.
Mr. Lawrence R. Heath, Corporation Counsel, Oneida County, P.O. Box 400,
 Rhinelander, Wisconsin 54501, appearing on behalf of the County.

FINDINGS OF FACT

CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

On July 16, 1992, Wisconsin Professional Police Association/LEER Division filed a petition with the Wisconsin Employment Relations Commission requesting that the Assistant Corporation Counsel be included in the existing courthouse bargaining unit. A hearing was held before the Commission's Examiner Christopher Honeyman on October 28, 1992 in Rhinelander, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, and the parties agreed to waive briefs and to rely on the notes of Examiner Honeyman concerning the testimony of Assistant Corporation Counsel Richard Shawl, the sole witness to testify. Both parties subsequently reviewed a typed version of Examiner Honeyman's notes, and by February 5, 1993 stipulated that they were correct. The record was thereupon closed.

The Commission has considered the evidence and arguments, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Professional Police Association/LEER Division, herein referred to as the Union, is a labor organization which has its principal office at 7 North Pinckney Street, Madison, Wisconsin 53703.
2. Oneida County, herein referred to as the County, is a municipal employer which has its primary offices at the Oneida County Courthouse, Rhinelander, Wisconsin 54501.
3. The Union and County are parties to a 1991-92 collective bargaining agreement under which the Union is the exclusive bargaining representative of the following collective bargaining unit:

All regular full-time and regular part-time employees of the Oneida County Courthouse covered by the agreement, but excluding all elected personnel, supervisory personnel, confidential personnel and managerial personnel.

4. The only issue in dispute is whether the Assistant Corporation Counsel in the Corporation Counsel's office should be included in the bargaining unit set forth in Finding of Fact 3 above. The Union argues for

inclusion and the County argues that the position is supervisory and confidential and should therefore be excluded.

5. Richard Shawl's unopposed testimony established the following:

- A. He has been employed by the Employer for 19 months as Assistant Corporation Counsel, and was not previously employed by Oneida County.
- B. There are two secretaries in the Corporation Counsel's office, each of whom does part of Shawl's work. In his view they do not work "under" him. The only other person in that office is Larry Heath.
- C. The secretaries are permanent employees. Shawl dictates the content of orders and pleadings, and tells the secretaries to contact various people. One secretary has other responsibilities, the other is a new part-time employee. In neither case is he sure how much routine work they have to do that does not involve input from either Shawl or Heath.
- D. Both Shawl and Heath give assignments to both secretaries, but Shawl gives work mostly to Wanda Bell, while Heath gives work mostly to Shari Gorney.
- E. Virtually all of Shawl's work time, he believes, is accounted for by attorney work rather than supervision. He reports to Heath, and has never been involved in any disciplinary action of any employee. He participated in the review of applications and resumes, and was present for interviews, for Bell's position. Gorney and Heath were also present and Heath made the final decision.
- F. Bell's predecessor took maternity leave. Shawl was employed in the Corporation Counsel's office when she left, but Heath and the Department of Personnel worked out the maternity leave arrangements. Shawl was not involved.
- G. Gorney informs him when she expects to be absent, while Bell gets permission from everyone in the office. In Shawl's view Gorney is notifying him, not asking his permission. He does not know if either secretary has filed any grievance, and does not think he has ever been involved in any grievance.
- H. Heath once assigned Shawl to review an insurance policy for Personnel Director Jackson. This may have been in response to a grievance, but he is not sure.
- I. The secretaries have worked overtime to do his documents. He can not require that, while Heath could. But when overtime has occurred it

has been at the secretary's discretion. This has happened rarely, perhaps six to at most 12 times in 18 months.

- J. Shawl has no role in preparing budgets and does not have control over any financial account. Occasionally litigation expenses are incurred on account of his actions. These are borne by various county departments. Shawl does not know who would have authority to move money between accounts to pay such expenses.
- K. Shawl's requests for purchases are approved by Heath. His involvement in formulating County policy is limited to procedures for mental health commitment and litigation procedures. Shawl researched and drafted new forms and discussed them with Heath. Between them they made changes, and set up procedures. This may have affected other departments but was primarily the professional work of a lawyer.
- L. Shawl drafted a Records Retention Ordinance at Heath's request, reviewed it with Heath, and brought it to the Resolution Committee. From the Corporation Counsel's office's point of view, Heath thereupon took it over. It was subsequently approved by the County Board action. Other than the insurance issue cited above, Shawl has not handled labor relations issues for any county department.
- M. Shawl has not been involved in contract negotiations with any union. The Corporation Counsel's office has records of labor disputes. Some are kept in the main area of the office that is shared by the two secretaries. There may be other files, but he is not sure. The files in the main part of the office are not kept locked, although the cabinet has a lock. Heath may have such records also in his office, which is locked separately; Shawl was not sure.
- N. The insurance policy question is the only item he can recall handling that was labor related. This was a question of what the policy covered. The vast majority of his work relates to the County Department of Social Services. He rarely attends County Board meetings and has never appeared before the County Board overall.

6. The record shows that Richard Shawl does not exercise supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employe, and does not have sufficient access to, knowledge of, or participation in confidential labor relations matters to render him a confidential employe.

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

CONCLUSION OF LAW

The occupant of the position of Assistant Corporation Counsel in the Corporation Counsel's office, currently Richard Shawl, is neither a supervisory employe within the meaning of Sec. 111.70(1)(o)(1), Stats., nor 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.

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

ORDER CLARIFYING BARGAINING UNIT 1/

The bargaining unit set forth in Finding of Fact 3 above is clarified by the inclusion of the Assistant Corporation Counsel in the Corporation Counsel's office.

1993.

Given under our hands and seal at the City of
Madison, Wisconsin this 30th day of March,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner

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

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

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial

(Footnote 1/ continued on Page 6)

(Footnote 1/ continued)

review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

The Commission considers the following factors in determining whether a position is supervisory in nature:

- 1.The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- 2.The authority to direct and assign the work force;
- 3.The number of employes supervised and the number of other persons exercising greater, similar or lessor 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.
- 5.Whether the supervisor is supervising activity or is primarily supervising employes;
- 6.Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employes; and
- 7.The amount of independent judgment exercised in the supervision of employes. 2/

. . .

It is well settled that for an employe to be considered confidential, the 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. 3/

In this case, the record establishes that the Assistant Corporation Counsel exercises little supervisory authority over any employe. The Corporation Counsel works in the same area as the Assistant and the two clerical employes, and only one of the clerical employes performs work mostly for the Assistant Corporation Counsel. Shawl has never interviewed, hired, promoted, transferred, disciplined, discharged, laid off or evaluated any

2/ Pierce County, Dec. No. 9616-D (WERC, 8/90); City of Cudahy, Dec. No. 26425 (WERC, 4/90); Portage County, Dec. No. 6478-D (WERC, 1/90); Crawford County, Dec. No. 16931-B (WERC, 9/89); Price County, Dec. No. 11217-B (WERC, 9/89).

3/ Village of Saukville, Dec. No. 26170 (WERC, 9/90); City of Greenfield, Dec. No. 26423 (WERC, 4/90).

employee, or effectively recommended same. At most, he assigns work to a secretary whose interview he attended, but the work is routine and he was not the final authority in hiring her. Virtually all of his time is spent performing the professional work of an attorney. We therefore conclude he is not a supervisor within the statute's meaning. Finally, although Shawl has general access to some files kept in the Corporation Counsel's office which contains confidential labor relations data, he does not have occasion to work with these files, and was apparently even unaware of the location of some of them. We therefore conclude that Shawl has minimal involvement in labor relations issues, and is not excludable from this mixed professional/non-professional bargaining unit as a confidential employee.

Dated at Madison, Wisconsin this 30th day of March, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner