

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
WEST CENTRAL EDUCATION	:	
ASSOCIATION	:	Case 16
	:	No. 38886 ME-2702
Involving Certain Employes of	:	Decision No. 24968-A
	:	
SOMERSET SCHOOL DISTRICT	:	
	:	

Appearances:

Mr. James Begalke, Executive Director, West Central Education Association, 105 21st Street North, Menomonie, Wisconsin 54751, appearing on behalf of the Association.

Mulcahy & Wherry, S.C., Attorneys at Law, by Ms. Kathryn J. Prenn, 21 South Barstow, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the District.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

West Central Education Association having, on June 4, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employes in the employ of the Somerset School District; and hearing in the matter having been conducted on September 29 and November 3, 1987, before Examiner James W. Engmann, a member of the Commission's staff; and at hearing the parties having resolved all of their disputes except as to the status of the Head Elementary Maintenance/Custodian and Head High School Maintenance/Custodian with the Association alleging said employes are municipal employes within the meaning of Sec. 111.70(1)(i), Stats., and the District alleging said employes are supervisors within the meaning of Sec. 111.70(1)(o), Stats.; and the parties having stipulated to an election and to postponement of argument and decision as to the two employes in dispute pending the outcome of the election; and an election by mail ballot having been conducted; and the ballots having been opened and counted on December 22, 1987, resulting in a tie vote; and a transcript of the two days of hearing having been prepared and forwarded to the parties on or about January 11, 1988; and the Association having on January 21, 1988, advised the Commission in writing that it was stipulating to the exclusion of the Head High School Maintenance/Custodian as supervisory; and the parties having had opportunity to file briefs which were exchanged on February 19, 1988; and the parties having waived the filing of reply briefs; and 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.

FINDINGS OF FACT

1. That Somerset School District (District or Employer) is a municipal employer, and that it has offices at 625 Sunrise Drive, P.O. Box 100, Somerset, Wisconsin 54025.
2. That West Central Education Association (Association) is a labor organization representing municipal employes for purposes of collective bargaining, and that it has its offices at 105 21st Street North, Menomonie, Wisconsin 54751.
3. That on June 4, 1987, the Association filed a Petition for Election Involving Municipal Employes with the Commission for a bargaining unit described as follows:
 - All full-time and part-time support staff personnel of the School District of Somerset, excluding all professional, managerial, supervisory and confidential employes of the District.

4. That hearing on this petition was held on September 29 and November 3, 1987; and that during the course of hearing, the parties stipulated that the unit described as follows is an appropriate unit:

All regular full-time and regular part-time support staff employes of the School District of Somerset, excluding professional, supervisory, managerial and confidential employes.

5. That during the course of the hearing the parties stipulated that the following positions are properly included in said bargaining unit:

High School Custodian	Kenneth Annis
High School Library Aide	Donna Belisle
High School Custodian	Virginia Belisle
Elementary and High School Custodian	Cletus Belle Isle
High School Aide	Connie Burch
Cooks Helper	Claire Cheaney
Elementary Aide	Patricia Edgar
Nurse	Kathleen Fox
Cooks Helper	Jelaine Germain
High School Secretary	Cheri Gutting
High School Custodian	Arvid Larson
Assistant Secretary/ Bookkeeper	Gail Maak
Elementary Library Aide	Lois Martell
Elementary Secretary	Joanne Moore
Elementary Aide	Sandra Nemec
Elementary Custodian	James Paquin
Elementary Custodian	Lillian Parnell
Cooks Helper	Lorraine Swanberg
High School Aide/ Summer/Custodian	Sharon Swanson
Elementary Aide	Julie White
Cooks Helper	Ida Ziemer

6. That during the course of hearing the parties stipulated that the following positions are properly excluded from said bargaining unit:

Bookkeeper	Vicky Gordon
Administrative Secretary	Connie Hanson
Head Cook	Debbie Revalee

7. That during the course of hearing the parties were unable to agree as to the status of Head Elementary Maintenance/Custodian Roland Belisle and Head High School Maintenance/Custodian Don Germain; that the Association alleged both positions should be included in the bargaining unit as the incumbents are municipal employes; and that the District alleged that both positions should be excluded from the bargaining unit as both incumbents are supervisors.

8. That the parties stipulated to an election among those positions listed in Finding of Fact 5; that the parties stipulated that the incumbents in the two positions listed in Finding of Fact 7 would be allowed to vote but said ballots would be challenged; and that the parties agreed to submit evidence as to these two positions at hearing but to delay argument and decision as to the status of these two positions pending the outcome of the election.

9. That the Commission directed the election on November 11, 1987, in Decision No. 24908 (WERC, 12/87); that the election was conducted by mail ballot; that said ballots were counted on December 22, 1988; that 22 ballots were cast; that two of those ballots were from the individuals listed in Finding of Fact 7; that these two ballots were challenged and therefore not opened; and that of the remaining 20 ballots, ten were cast for the Association and ten were cast for no representation.

10. That by letter dated December 22, 1987, the Commission advised the parties as to the election results.

11. That on December 29, 1987, the Association filed objections to the conduct of election which it asked be held in abeyance pending the Commission's disposition of the status of Germain and Belisle.

12. That in a letter received January 21, 1988, the Association advised the Commission that the Association agreed to the exclusion of the Head High School Maintenance/Custodian as a supervisor.

13. That prior to January 1987, the District had three supervisory positions for the custodians; that both the elementary school and the high school had a head custodian; that these two head custodians reported to the Supervisor of Buildings and Grounds; that said supervisor reported directly to the District Administrator; that Roland Belisle was Supervisor of Buildings and Grounds; that Belisle was also head custodian of the elementary school; and that Don Germain was head custodian of the high school.

14. That in early 1987 the District through District Administrator Dianne Beeler reorganized the supervision of the custodial staff; that the position of Supervisor of Buildings and Grounds was eliminated; that Roland Belisle was appointed Head Elementary Maintenance/Custodian; that as such he reports to the Elementary School Principal Janet Mueller; that Don Germain was named Head High School Maintenance/Custodian and reports to the high school principal; and that Belisle's duties involving the supervision of employes are much the same after the reorganization except his responsibility is limited to the elementary school.

15. That Belisle is responsible for the maintenance and custodial work done at the elementary school; that Belisle's job description describes his work week as one of 6:30 a.m. to 3:00 p.m. Monday through Friday; that Belisle supervises the remaining custodial employes at the elementary school: Cletus Belle Isle, James Pacquin and Lillian Parnell; that these employes work the following hours during the school year; Belle Isle 2:30 - 8:00 p.m., Pacquin 2:00 - 10:30 p.m. and Parnell 3:00 - 5:30 p.m.; that during the summer these employes work days; that during the summer Sharon Swanson works as a custodian at the elementary school; that Belisle supervises her; that Belisle reports to Principal Janet Mueller; that Mueller reports to District Administrator Dianne Beller; that Belisle schedules and assigns work to the custodians; that he does periodic checks to see if work is being done; that during the school year he seldom observes custodians actually doing the work as the employes work hours different than his; that on occasion he comes back to work to check on the custodians; that during the summer the custodians work the same hours as Belisle; that he signs these custodians' time sheets; that he evaluates in writing the four custodians in the elementary school; that he uses a form provided by the District for such evaluations; that Belisle met with each employe to discuss the evaluation with each of them; that the evaluation is then placed in the employe's personnel file; and that Belisle has authority to direct and assign the work force.

16. That Belisle has been involved in the hiring of at least two regular employes; that he recommended the hiring of Arvid Larson who was hired; that he was involved in the interviewing and hiring of Cletus Belle Isle; that he did not recommend the hiring of Belle Isle; nevertheless the District hired Belle Isle; that he has hired temporary substitutes to fill in for absent employes; that he has been involved in all disciplinary action of the custodians; that on one occasion Belisle talked to Principal Mueller about a custodian removing food from a cooler; that Belisle decided some action needed to be taken; that Mueller and Belisle discussed putting the discipline in written form so it could be placed in the employe's personnel file; that Belisle asked Mueller to have the letter written; that both Mueller and Belisle signed the letter; that both Mueller and Belisle met with the employe to discuss the situation; that Belisle determined that the employe should not have access to keys to the cooler; that Belisle collected these keys from the employe; that if Principal Mueller receives complaints about the custodians, she refers the matter to Belisle; that part of his job is to straighten out employes who are not doing the job; that he has orally reprimanded employes on several occasions; that he was involved in the decision making process resulting in the partial transfer of one employe from the elementary school to the high school; that initially the administration decided to transfer the employe for four hours a day to the high school; that Belisle voiced concerns about the number and the timing of the hours to Principal Mueller; that a meeting was held involving the District Administrator, both principals and both head custodians; that the result of that meeting was a consensus that the employe

would be transferred for three hours instead of four hours, and the time he would be at the high school was also changed; that Belisle has authority to recommend hiring and transfer of employees; and that he has the authority to effectively recommend the discipline of employees.

17. That while Belisle's regular work week is Monday through Friday, he checks the building on weekends; that he takes compensatory time for checking the building during the same week; that he has authority to add or temporarily change hours or assign overtime without prior approval; that one time he requested overtime for one employe which was denied by the administrator; that he would seek the principal's approval before changing an employe's hours permanently; that he has the authority to schedule and grant vacation time of the custodians; that he contacted a company to paint the lockers; that he oversaw the work of the painters and had them do part of the job again before he authorized payment; that Belisle has his own office and telephone which the other custodians do not; and that Belisle exercises significant independent judgment in the supervision of the elementary custodians.

18. That the Head High School Custodian, Don Germain, is paid \$11.08 per hour; that Belisle is paid \$11.35 per hour; that the other custodians at the elementary school are paid from \$5.95 to 7.38 per hour; that the custodians salary is based upon amount of seniority they have and the amount of maintenance work for which they are responsible; that Belisle is paid more than the other custodians partially because he is required to use mechanical, carpentry and electrical skills to a greater degree than other custodians; that he is also paid more because he is supervising other employes; and that a majority of his time is spent in custodial and maintenance duties.

19. That Belisle exercises supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employe.

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

CONCLUSION OF LAW

That the occupant of the position of Head Elementary School Maintenance/Custodian 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)(1), Stats.

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

ORDER

1. That the position of Head Elementary School Maintenance/Custodian is excluded from the bargaining unit described in Finding of Fact 4.

2. That the ballot of the Head Elementary School Maintenance/Custodian will not be opened.

Given under our hands and seal at the City of
Madison, Wisconsin this 28th day of March, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

SOMERSET SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

POSITION OF THE PARTIES

District

The record shows that the Head Elementary Maintenance/Custodian has the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes; that the Head Elementary Maintenance/Custodian has the authority to direct and assign the work force; that the number of persons supervised, considering the number of persons exercising greater, similar or lesser authority over the same employes, demonstrates that the Head Elementary Maintenance/Custodian is a supervisory employe; that the Head Elementary Maintenance/Custodian is compensated not only for his skill, but also for his supervision of employes; that the Head Elementary Maintenance/Custodian is primarily supervising employes rather than supervising an activity; and that the amount of independent judgment exercised by the Head Elementary Maintenance/Custodian indicates that the occupant is a supervisor.

Association

The District was motivated to make the position of Head Elementary Maintenance/Custodian appear as supervisory to avoid its inclusion in the collective bargaining unit. The position of Head Elementary Maintenance/Custodian is not supervisory in nature as the factors considered by the Commission in such matters are not present in sufficient combination and degree. Specifically, the Head Elementary Maintenance/Custodian does not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes or to direct and assign the work force without the approval of the building principal; that based upon the number of employes supervised, the number of other persons exercising greater, similar or lesser authority over the same employes, the Head Elementary Maintenance/Custodian position is not supervisory; that the level of pay for the Head Elementary Maintenance/Custodian is based upon his skills, not his supervision of employes; that the Head Elementary Maintenance/Custodian duties include supervising activities and are not primarily related to supervising employes; that the Head Elementary Maintenance/Custodian is a working supervisor and does not spend a substantial majority of his time supervising employes; and that the Head Elementary Maintenance/Custodian is not allowed to exercise any significant amount of independent judgment in the supervision of employes.

DISCUSSION

The Commission considers the following factors in determining if a position is supervisory in nature: 1/

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

1/ Nicolet College and Technical Institute, Dec. No. 23366 (WERC, 3/86); Phillips School District, Dec. No. 22905 (WERC, 8/85); City of Jefferson, Dec. No. 10344-A, (WERC, 3/85).

5. 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 judgement exercised in the supervision of employes.

Not all of these factors need to be present in any given case, but a sufficient combination of said factors must be present for the Commission to find an employe to be a supervisor. 2/

In its brief, the Association argues that the District was motivated to make the position of Head Elementary Maintenance/Custodian appear as supervisory to avoid its inclusion in the collective bargaining unit. In support of this, the Union points to a modification in the job description for the Head Elementary Maintenance/Custodian made by the District following the Association's request for voluntary recognition. But while the job description is helpful in determining a person's duties, the inclusion or exclusion of supervisory duties in a job description is not binding on the Commission; instead, the Commission looks at the actual duties the person performs to determine supervisory status.

In regard to that, the Association argues that the Commission is limited in looking at the job duties of Belisle from such time as he became Head Elementary Maintenance/Custodian. Thus, the Association argues that the Commission should not examine the duties of Belisle when he was both Supervisor of Buildings and Grounds and Head Custodian of the Elementary School. However, the record is clear that Belisle's duties changed in only one way in the reorganization - instead of being responsible for two schools, he is now responsible for one. Thus, evidence as to his prior authority as Supervisor of Buildings and Grounds and Head Custodian of the Elementary School is relevant to the determination of his status as Head Elementary Maintenance/Custodian.

As to the authority of Belisle to effectively recommend the hiring of employes, the record certainly shows that he is involved in the hiring process, including sitting in on interviews and recommending the person he believes should be hired. However, the evidence is inconclusive whether he can effectively recommend in this area. For example, on one occasion his recommendation was not followed.

But in the area of discipline, the record shows that the Elementary School Principal consistently refers concerns and complaints to Belisle and assumes the matter will be taken care of by him. While the authority to suspend is restricted to the District Administrators, Belisle has exercised the authority to orally reprimand employes and has the authority to effectively recommend other discipline.

The record also is clear that Belisle has authority to direct and assign the work force. The parties agree that he is responsible for the upkeep of the building, and in carrying out that responsibility he has authority to tell the custodians what to do and when to do it. While Belisle's direct supervision of these custodians is limited by the different hours that he and they work during the school year and the number of employes he supervises is small, he does check their work to see if it was done when he is on duty and, at times, he comes back to check on them personally. Belisle has also formally evaluated all these employes, discussed the evaluations with the employe and reduced the evaluation to written form for placement in the personnel file.

The record is clear that most of Belisle's time is spent doing maintenance and custodial work as opposed to supervising employes. His maintenance duties also account for part of his greater salary. Whereas a custodian with no maintenance duties is paid \$5.95 an hour, Belisle is paid \$11.35. Yet one employe who is 50% custodian/50% maintenance is paid only \$7.38 an hour. Part of the

2/ Juneau County, Dec. No. 18728-A (WERC, 1/86).

difference between \$7.38 and \$11.35 is for greater maintenance duties but Belisle also receives higher pay for his supervisory duties.

Finally, Belisle exercises independent judgment in supervising these employes. He can change hours and grant or deny vacation. He determines when to check on the custodians and has some flexibility in his own hours of work. While he may take major changes to his supervisors, he does exercise significant independent judgement with those he supervises.

In summation, while Belisle as Head Elementary Maintenance/Custodian does not exhibit all of the factors we consider in determining supervisory status, he exhibits a sufficient combination of these factors for us to find him to be a supervisor. For these reasons we conclude that the position of Head Elementary Maintenance/Custodian is a supervisor and is excluded from the bargaining unit described in Finding of Fact 4 above. His ballot will not be opened and the election results remain ten for representation and ten against same.

As indicated in Finding of Fact 11, the Association has already filed objections to the conduct of election. A member of the Commission's staff will be contacting the parties to discuss the processing of the objections.

Dated at Madison, Wisconsin this 28th day of March, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner