

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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WISCONSIN COUNCIL 40,	:	
AFSCME, AFL-CIO	:	Case 9
	:	No. 39244 ME-2733
Involving Certain Employes of	:	Decision No. 25197
	:	
CITY OF PLATTEVILLE	:	
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Appearances:

- Mr. Richard W. Abelson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2216 Allen Lane, Waukesha, WI 53186, appearing on behalf of the Union.
- Mr. James R. Korom, von Briesen & Purtell, Attorneys at Law, Suite 700, 411 East Wisconsin Avenue, Milwaukee, WI 53202, appearing on behalf of the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

Wisconsin Council 40, AFSCME, AFL-CIO having, on August 3, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all regular full-time and regular part-time employes of the City of Platteville employed in the Water and Sewer and Public Works departments, excluding confidential, supervisory, managerial, and professional employes, to determine whether said employes desire to be represented by said Petitioner for the purpose of collective bargaining; and the City having advised the Commission on August 19, 1987 that the parties would be discussing the possibility of settlement; and hearing in this matter having originally been scheduled for October 5, 1987; and the Union having on September 30, 1987 requested a postponement of the hearing due to a death in the family of the Union Representative; and hearing in the matter having been conducted on November 16, 1987 at Platteville, Wisconsin, before Examiner Beverly M. Massing, a member of the Commission's staff; and at said hearing a stenographic record having been made; and a stenographic transcript having been received on November 23, 1987; and the City having submitted a post-hearing brief by December 14, 1987; and the Union choosing to not file a brief in this matter; 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

1. That Wisconsin Council 40, AFSCME, AFL-CIO, herein referred to as the Union, is a labor organization and has its offices at 2216 Allen Lane, Waukesha, Wisconsin 53186.

2. That the City of Platteville, herein referred to as the City, is a municipal employer and has its offices at City Hall, 75 North Bonson Street, Platteville, Wisconsin 53818.

3. That in its petition initiating the instant proceeding, the Union seeks an election among employes employed by the City in the following unit:

All regular full-time and regular part-time employes of the City of Platteville employed in the Water and Sewer and Public Works departments, excluding confidential, supervisory, managerial and professional employes;

that the parties have stipulated that said unit is appropriate and that the affected employes are not presently represented by any other labor organization; and that at hearing the parties stipulated that part-time employe George Wilson and full-time employe Carolyn Seffrood are properly included in the claimed unit and are eligible to vote in an election.

4. That the City, contrary to the Union, contends that the positions of Water Plant Foreman, Wastewater Treatment Plant Foreman, and Maintenance Utility Foreman are properly classified as supervisory, and therefore should be excluded from the bargaining unit.

5. That the three foreman positions in question are supervised by the Utility Superintendent, Michael Willis; that Willis reports to the Director of Public Works, who, in turn, reports to the City Manager, who reports to the Water and Sewer Commission; that Willis coordinates the administration and overall operation of the two water plants, the sewer plant, and the water-sewer maintenance department, and oversees the work of the three foremen on a daily basis; that the position of Water Plant Foreman is currently held by Daniel Hibner; that Hibner oversees the work of one full-time and one part-time employe in the two water plants, and is in charge of water quality control; that David Knetter is employed as the Wastewater Treatment Plant Foreman; that Knetter oversees four full-time employes and is responsible to the DNR and EPA for complying with EPA wastewater standards; that Gary Wetter is employed as the Maintenance Utility Foreman; and that Wetter oversees three full-time employes and is responsible for the maintenance of all City water and sewer lines.

6. That when employes are hired by the City to work in the water or sewer plant, Utility Superintendent Willis and the Director of Public Works review the applications of potential employes, conduct any interviews, and ultimately submit the names of those applicants they believe would be acceptable employes to the City Manager and the Water and Sewer Commission who make the hiring decision; that only two new employes have been hired in the last five years in the sewer or water plant, a lab technician position and a maintenance position; that when the lab technician position was filled, Wastewater Treatment Foreman Knetter knew one of the applicants and recommended her to Superintendent Willis; that the name of the applicant Knetter recommended was included in the list of applicants submitted to the City Manager and the Water and Sewer Commission and said applicant was ultimately hired for the position; that when the maintenance position was filled, Maintenance Foreman Wetter reviewed the applicants who had been interviewed and found acceptable by the Superintendent and Director of Public Works and recommended one applicant as being the best; that Wetter was familiar with the work of all of the applicants; that the applicant Wetter recommended was ultimately hired for the maintenance position; that new employes are trained by the Utility Superintendent and the foreman of the operation; that Hibner, Wetter and Knetter assign work tasks to their employes and have authority to call employes in on an emergency basis; that the three foremen are at or near the top of the list of phone numbers maintained by the Police Department for emergencies; that Wetter and Knetter meet informally with their employes every morning; that all three departments have set work schedules, but the foremen may authorize deviations from the schedules; that the foremen must have the approval of the Utility Superintendent to transfer employes between departments or increase employe hours; that the foremen punch timecards themselves, sign timecards for their employes and make necessary timecard adjustments; that the foremen do not have authority to grant overtime, except in an emergency; that employes may not bypass the foremen and go directly to the Utility Superintendent on issues involving discipline, layoffs, scheduling, or grievances; that when such issues are called to the foreman's attention, the foreman advises the Utility Superintendent who holds a conference with all involved parties; that all three foremen can verbally reprimand employes without prior authorization from the Utility Superintendent, although Hibner has never had occasion to do so; that verbal reprimands occur infrequently, and are not documented in writing; that the foremen can recommend more formal discipline of an employe to the Utility Superintendent which would require the approval of the Director of Public Works, the City Manager, and ultimately the Commission; that there has not been a formal discipline of an employe in at least five years; that the foremen receive and adjust employe complaints about working conditions or work tasks; that the foremen authorize vacation and sick leave requests, except for Water Plant Foreman Hibner who consults first with the Utility Superintendent; that the foremen have authority to grant days off without pay, although they have never done so and Knetter would consult with the Utility Superintendent; that there is no formal evaluation process for employes but that the foremen and Utility Superintendent informally review an employe's progress on an ongoing basis; and that the foremen do not attend department head meetings and would not be called upon to substitute for the Utility Superintendent in his absence.

7. That Wastewater Treatment Plant Foreman Knetter has an annual salary of \$25,379.00 and has served in this capacity for approximately 15 years; that the employes he oversees earn from \$5.54 per hour to \$8.31 per hour; that Water Plant Foreman Daniel Hibner has an annual salary of \$19,884.00 and has served as foreman for one and one-half years; that the employes he oversees earn from \$5.54 per hour to \$7.56 per hour; that Maintenance Utility Foreman Gary Wetter has an annual salary of \$24,171.00, and has served in this capacity for approximately ten years; that the employes he oversees earn from \$5.54 per hour to \$10.44 per hour; and that if the foremen work more than 40 hours per week, they receive time and a half in pay or may take compensatory time at the time and one half rate.

8. That Maintenance Utility Foreman Wetter receives his job assignments each day from the Utility Superintendent and in turn assigns tasks to his crew; that Wetter normally spends approximately 10-15 percent of his time performing tasks which are not performed by his crew, (i.e., purchasing and budget preparations); that Wastewater Treatment Plant Foreman Knetter spends approximately 10-15 percent of his time performing tasks which are not performed by his crew; (i.e., budget preparation, state and federal reports, and lab reports); that Knetter is a grade 4 certified Department of Natural Resources Wastewater Treatment Plant Operator; that Tuesday through Friday, Water Plant Foreman Hibner works the 4:00 a.m. to 12:00 noon shift alone and performs the same work tasks in the Water Plants as the two employes he oversees; that on Mondays, Hibner assigns some of these tasks to the part-time employe who joins him on the early shift; that at noon, Hibner's full-time employe replaces him for a full shift; that Hibner consults more often with the Utility Superintendent regarding overtime or vacation scheduling due to the small number of employes he oversees; that often maintenance employes are assigned to the Water Plants by the Utility Superintendent on a needs basis; that Hibner performs tasks not normally performed by his crew such as filling out state reports, and water sampling; the Water Plant Foreman Hibner, Maintenance Utility Foreman Wetter and Wastewater Treatment Plant Foreman Knetter do not possess and exercise supervisory authority in sufficient combination and degree to be supervisory employes.

#### CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time employes of the City of Platteville employed in the Water and Sewer and Public Works departments, excluding confidential, supervisory, managerial and professional employes, constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That the positions of Water Plant Foreman, Wastewater Treatment Plant Foreman and Maintenance Utility Foreman are not supervisory within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore the occupant of said positions are municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

3. That a question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., exists among the employes in the bargaining unit described in Conclusion of Law 1.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

#### DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days of this directive, in the collective bargaining unit consisting of all regular full-time and all regular part-time employes of the City of Platteville employed in the Water and Sewer and Public Works departments, excluding confidential, supervisory, managerial and

professional employes, who were employed by the City of Platteville on February 22, 1988, except such employes as may prior to the election quit their employment or be discharged for cause for the purpose of determining whether a majority of said employes desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO, for the purpose of collective bargaining with the City of Platteville concerning wages, hours and conditions of employment or to not be represented.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of February, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

A. Henry Hempe  
A. Henry Hempe, Commissioner

CITY OF PLATTEVILLE

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DIRECTION OF ELECTION

POSITIONS OF THE PARTIES

City

The City contends that the positions of Utility Maintenance Foreman, Waste Water Treatment Plant Foreman, and Water Plant Foreman within the Department of Public Works are supervisory in nature and should be excluded from the claimed bargaining unit. Although the City acknowledges that the three foremen have no formal authority to hire, suspend, or discharge employees in their departments, the City cites several cases in which supervisory status was found to exist under allegedly less compelling fact situations. The City further argues that even though the foremen have not had to discipline employees on a regular basis, they have the authority to do so. Finally, the City contends that the position of Water Plant Foreman is sufficiently supervisory even though it may meet fewer of the statutory criteria than the other two foremen positions.

Union

Although the Union chose not to file a brief in this matter, at hearing the Union contended that the three foremen positions were not supervisory and therefore properly includable in the claimed bargaining unit.

DISCUSSION

The Commission has consistently considered the following factors in determining if 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 employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 1/

The Commission has held that not all of the above factors need to be present, but that if a sufficient number of these factors appear in any given case, the Commission will find an employee to be a supervisor. 2/

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1/ Door County, Dec. No. 20020 (WERC, 10/82); and Laona School District, Dec. No. 22825 (WERC, 8/85).

2/ Dodge County, Dec. No. 18076-A (WERC, 3/83).

The record establishes that the foremen in question possess certain authority to adjust employe work schedules, resolve employe complaints, grant vacation and sick leave requests and direct the work of the small crews they oversee. However, we are satisfied that the exercise of such authority does not involve any significant exercise of independent judgement. We find it apparent from the testimony of the three foremen and Superintendent Willis that when a decision of any consequence is to be made, Superintendent Willis would be consulted before any action was taken. Willis' influence extends to the point where he would be consulted, if possible, before an employe was verbally reprimanded. Thus, even in the area of discipline, we find that the foremen have a very limited role to play. In this regard, it is also noteworthy that Superintendent Willis himself is several layers of authority below the Water and Sewer Commission who would ultimately make any significant disciplinary decision and that the foremen's job descriptions make no mention of any disciplinary authority whatsoever.

We are cognizant of the informal role two of the foremen have had in the hiring of two employes. However, because it appears from the record that their role is dependent upon their possession of independent knowledge of an applicants qualities and thus may not be exercised in future hires (i.e., they don't participate in the interview process) and because their input is received by the Superintendent who, in turn passes his recommendation through several additional layers of authority to the ultimate decision makers, we discount the impact which their role in the hiring process would otherwise have in our determination.

The foregoing distinguishes these three foremen from the employes found to be supervisory in the cases cited by the City. For instance, in Village of Williams Bay, Dec. No. 18972, (WERC, 9/81) the individuals in question had substantial hiring and disciplinary authority, including issuance of suspensions, and exercised substantial independent responsibility when running their departments. In Town of Allouez, Dec. No. 22065, (WERC, 11/84), the Street Superintendent found supervisory had a formal role in the hiring process through participation in interviews, had effective authority to recommend discipline and had issued a written warning, and independently ran a department consisting of a lead foreman and 14 full-time and 5-8 part-time employes. Lastly, in City of Middleton, Dec. No. 10381-B, (WERC, 7/81), the foreman positions found supervisory possessed and exercised greater independent authority to assign and direct the work force than is present herein and had actual or effective hiring authority.

In summary, the foremen in question do not exercise significant independent judgement when exercising their limited supervisory authority, and do not have significant hiring or disciplinary responsibility. We conclude that the foremen are essentially lead workers being paid more than the employes they oversee because of their skill and experience. They do not possess the indicia of supervisory status in sufficient combination and degree to be found supervisory employes.

Dated at Madison, Wisconsin this 22nd day of February, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

A. Henry Henpe  
A. Henry Henpe, Commissioner