

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :
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 GENERAL TEAMSTERS, LOCAL 662 : Case 2
 : No. 43681 ME-2980
 Involving Certain Employes of : Decision No. 26689
 :
 CITY OF ST. CROIX FALLS :
 (DEPARTMENT OF PUBLIC WORKS) :
 :

Appearances:

Ms. Christel Jorgenson, Business Agent, P.O. Box 86, Eau Claire, WI 54702-0086, on behalf of General Teamsters Union, Local 662.
Mulcahy and Wherry, S.C., by Mr. Richard J. Ricci, 715 South Barstow Street, P.O. Box 1030, Eau Claire, WI 54702-1030, on behalf of the City of St. Croix Falls.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

General Teamsters, Local 662, having on February 19, 1990 filed a petition requesting that the Wisconsin Employment Relations Commission conduct an election among all regular full-time and regular part-time employes employed by the City of St. Croix Falls Department of Public Works, excluding supervisory, managerial, confidential and clerical employes; and after postponement due to the parties' scheduling difficulties, hearing on said petition being held on August 14, 1990, in St. Croix Falls, Wisconsin by Mary Jo Schiavoni, an Examiner on the Commission's staff; and the parties having stipulated to a tape recording of the proceedings as constituting the record due to the unavailability of a stenographic reporter; and the parties having completed their briefing schedule on September 10, 1990; and the Commission, having considered the entire record, and being fully advised in the premises herein, makes and issues the following

FINDINGS OF FACT

1. That General Teamsters Local 662, hereinafter referred to as the Union, is a labor organization with offices in Eau Claire, Wisconsin.

2. That the City of St. Croix Falls, hereinafter the City, is a municipal employer with offices located at St. Croix Falls, Wisconsin, and among its various governmental functions, operates a Department of Public Works wherein various individuals are employed.

3. That this proceeding concerns a petition for election filed by the Union as to certain non-professional employes of the City to determine whether those employes wish to be represented by the Union for purposes of collective bargaining; and that the parties have stipulated to the following as the appropriate bargaining unit:

All regular full-time and regular part-time employes of the City of St. Croix Falls Department of Public Works (water, wastewater and street departments) excluding supervisory, managerial, confidential and clerical employes.

4. That the only issue for determination is the supervisory status of the Utility Superintendent position currently occupied by Steven Warndahl; and that the Union contends that the position is non-supervisory while the City maintains that it is supervisory in nature.

5. That the City employs six individuals in its Department of Public Works: two employes at the wastewater treatment plant, two in the street division, one in the parks division and a Utility Superintendent whose general responsibility is to oversee the entire Department.

6. That the Utility Superintendent, Steven Warndahl, was hired in 1987 as a mechanic and street division worker; that in the spring of 1989, the City posted the Utility Superintendent position and promoted him to said position; that in addition to his new duties as Utility Superintendent, Warndahl retained his mechanic and street division duties; that prior to the creation of the Utility Superintendent position, wastewater and water employes, of which there was only one, reported to a Wastewater and Water Supervisor, a position which no longer exists; that the street and parks employes had no direct supervisor other than the City Administrator; that the Utility Supervisor's job description reflects the City's desire that Warndahl manages all utility division areas of responsibility --- streets, parks, sewers, water, wastewater treatment and meters; that said job description provides that the Utility

Superintendent should make employe performance appraisals, develop employe job descriptions, supervise all Department of Public Works employes, manage subcontractors, and account for projects' time and cost; that Warndahl is immediately responsible to the City Administrator and the Mayor; that his purchasing authority is limited to \$200; that Warndahl oversees or directs the work assignments of the street and parks employes but that these assignments are based upon a priority list which he receives from the City Administrator or the Mayor; that Warndahl decides how to accomplish the tasks on the list and who will perform them; that Warndahl does not see all of the employes, especially those in the wastewater and water divisions, on a daily basis because they are all more experienced than he in performing their duties and they perform them satisfactorily; that Warndahl works along side the street and parks employes at times taking instruction and direction from the most senior street employe; that Warndahl does not have the authority to contact independent contractors for snow hauling but must call the City Administrator or the Mayor for permission; that Warndahl spends very little time performing supervisory duties; that Warndahl does schedule and authorize overtime for routine matters, vacation, personal leave, or other leave for the Department of Public Works employes; that Warndahl's pay increased from \$7.50 per hour as a mechanic in 1988 to \$8.75 in 1989 as the Utility Superintendent, and to \$9.60 in 1990, but that the amount of the pay increase which he received was not significantly greater than that received by another employe, Dale Johnson, and that his rate of pay remained \$1.25 per hour less than that of another employe, Robert Northquist, in 1989, and \$.70 per hour less in 1990; that Warndahl does not possess the authority to effectively recommend the hiring of employes; that in the case of the only recent hire during Warndahl's tenure, Warndahl did sit in on the interviews of the job applicants but was not asked for an opinion, and that the final hiring was determined by the City Council; that Warndahl did recommend that an individual who he knew to be available be hired because he was familiar with this individual and felt he could perform the job, but that there was a major dispute in the Council as to whether the individual should be hired; that the Council ultimately followed Warndahl's recommendation; that Warndahl has no authority to suspend, discharge, layoff or recall employes; that the parameters of Warndahl's authority to effectively recommend same have not been discussed with Warndahl because the City Administrator himself was unsure of the parameters of his own authority; that if the City Administrator received a recommendation from Warndahl to terminate an employe, the City Administrator would both rely on same and conduct his own investigation; that notwithstanding Warndahl was signatory to two disciplinary memos issued to employes, he had nothing to do with the draft of one of the memos, merely copying the City Administrator's draft and signing it on request of the City Administrator; that with respect to the second memo, this written warning was issued on the advice of the City Administrator, but that Warndahl clearly advised the employe that failure to notify him of problems in the future will result in other disciplinary action; that with respect to employe performance evaluations, the City Administrator did the evaluations while instructing Warndahl how to evaluate, but that Warndahl has not performed evaluations independently; that Warndahl is not required to attend City Council meetings as is the City Administrator; that weekly "management meetings" were also attended by the most senior wastewater and the most senior street employes; and that Warndahl is responsible for coordinating and supervising activities rather than supervising employes and as such is a lead man.

7. That Warndahl in his position of Utility Superintendent does not exercise supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employe.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time employes of the City of St. Croix Falls Department of Public Works (water, wastewater and street departments), excluding supervisory, managerial, confidential and clerical employes constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That the occupant of the position of Utility Superintendent is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and is therefore a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., appropriately included in the bargaining unit set forth in Conclusion of Law 1.

3. That a question of representation within the meaning of Sec. 111.70(4)(d), Stats., has arisen among the municipal employes in the collective bargaining unit set forth 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 forty-five (45) days from the

date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time employes of the City of St. Croix Falls Department of Public Works (water, wastewater and street departments) excluding supervisory, managerial, confidential and clerical employes who are employed by the City of St. Croix Falls on November 15, 1990, 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 General Teamsters Local 662 for the purpose of collective bargaining with the City of St. Croix Falls on wages, hours and conditions of employment or not to be represented.

Given under our hands and seal at the City of
Madison, Wisconsin this 15th day of November,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

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

The only issue to be determined is the supervisory status of the Utility Superintendent.

POSITION OF THE PARTIES:

City:

The City argues that the Utility Superintendent, Steve Warndahl, has the authority to recommend the hiring, promotion, transfer, discipline or discharge of employes. It further contends that he has the authority to direct and assign the workforce. The record, it asserts, establishes that the ratio of employes supervised to persons exercising greater, similar, or lesser authority over the same employes supports the conclusion that Warndahl is a supervisory employe. According to the City, the Utility Superintendent is compensated not only for his skill but for his supervisory duties and Warndahl is primarily supervising employes rather than directing an activity. Warndahl, it avers, exercises sufficient independent judgment so as to warrant a finding that he is a supervisor under MERA.

Union:

It is the Union's contention that the position held by Warndahl is not a supervisory position and should be included in the bargaining unit. Warndahl, it alleges, is at most a working foreman without sufficient authority to be found to be a supervisor. According to the Union, Warndahl was given the title of Utility Superintendent and, with it, he became the buffer between the City Administrator and the work force because the City Administrator had problems relating with the work force. It stresses that the title was not accompanied by any of the authority that would establish supervisory status. His authority to direct and assign the work force is that of a lead worker; his involvement in hiring has been negligible; and the assignment of tasks to other employes is minimal. The Union points out that Warndahl's involvement in policy-making is nonexistent, and his pay certainly does not reflect any compensation for the position the City alleges he fills in the organizational structure. The Union maintains that the Utility Superintendent's duties do not meet the criteria for finding the position to be supervisory in nature. It urges the Commission to find him to be a municipal employe appropriately included in the stipulated bargaining unit.

DISCUSSION:

In determining if a position is supervisory, the Commission considers the following criteria:

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 or her skills or for his or her supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employes; and
7. The amount of independent judgment exercised in the supervision of employes. 1/

1/ Dane County, Dec. No. 22976 (WERC, 10/85); City of Milwaukee, Dec. No. 6960 (WERC, 12/64); Eau Claire County, Dec. No. 17488-A (WERC, 3/81).

It is undisputed that the Utility Superintendent has no authority to hire, promote, transfer, suspend or discharge employes. The City claims that he does, however, possess the authority to effectively recommend hiring and discipline. The record does not indicate that Warndahl possesses said authority. With respect to his making effective recommendations as to the hiring of employes, we note he was asked to sit in on applicant interviews for the most recent vacancy. Although he volunteered his recommendation as to whom the City should hire, his opinion and recommendation was neither solicited nor readily accepted.

With respect to personnel evaluations, evidence adduced at hearing indicates that Warndahl was present at evaluation sessions with the City Administrator. The evaluations, however, were performed by the City Administrator. Warndahl's role was essentially limited to receiving instructions on the evaluation process with the intent that he make the evaluations in the future. In this instance, the City Administrator utilized them to make pay recommendations. There is, however, no evidence as to how or whether Warndahl's evaluations will be utilized in the future with respect to promotion, demotion, transfer, or discipline. Thus, at best, Warndahl's participation in the evaluation process is still embryonic.

Nor has Warndahl effectively recommended discipline. The record reveals that he has not acted independently in issuing written warnings. On the two occasions he issued written warnings, they were issued by him at the behest of the City Administrator. Although Warndahl believes he may have the authority to issue a written warning, the City Administrator testified that the parameters of Warndahl's authority to effectively recommend the suspension, discharge or layoff of employes have never been discussed with Warndahl. The City Administrator testified that this absence of discussion reflected the Administrator's uncertainty as to his own parameters concerning same. The City Administrator also testified that if he were to receive a recommendation by Warndahl to terminate an employe he would both rely on said recommendation and conduct his own investigation. At this time, it must be concluded that Warndahl's participation in the disciplinary processes is quite limited.

Warndahl is responsible for approving routine overtime, vacation, sick leave and other leaves. He cannot, however, authorize overtime for special projects nor is he empowered to contract for snow hauling with independent contractors without the approval of the City Administrator or Mayor. Overall, it does not appear his responsibilities in these areas constitute the exercise of independent judgment.

Nor do Warndahl's responsibilities when making work assignments support a conclusion that he exercises a great deal of independent judgment in the supervision of employes. He makes job assignments based upon a priority list provided to him by the City Administrator or Mayor. While he does assign two street employes and one parks' employe to their respective job sites, he works along with them and spends a significant amount of time performing work similar to theirs. Indeed, because all but one of the employes are more experienced in performing their job assignments, the Superintendent will from time to time be directed in his work by the employes. Thus, we conclude he supervises work activity, not the employes.

Finally, we note the Utility Superintendent does not receive significantly greater pay than unit employes. He earns less per hour than one of the street employes whom he is allegedly responsible for supervising, 2/ and the percentage wage increase that he received is similar to that received by other unit employes.

Based on the above considerations, we find that the Utility Superintendent does not possess the supervisory criteria in sufficient combination and degree to render him a supervisory employe within the meaning of the Municipal Employment Relations Act. Instead, we find Warndahl to be a lead man.

Dated at Madison, Wisconsin this 15th day of November, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

2/ See City of Sheboygan (Water Department), Dec. No. 7378-A (WERC, 5/89).