

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 TEAMSTERS LOCAL UNION NO. 579 :  
 affiliated with INTERNATIONAL :  
 BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, :  
 WAREHOUSEMEN AND HELPERS OF AMERICA : Case 1  
 : No. 44116 ME-3015  
 Involving Certain Employes of : Decision No. 26734  
 :  
 VILLAGE OF DICKEYVILLE (DEPARTMENT :  
 OF PUBLIC WORKS) :  
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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller, & Brueggeman, S.C., Attorneys at Law, by Ms. Marianne Goldstein Robbins, 788 North Jefferson Street, Room 600, P.O. Box 92099, Milwaukee, Wisconsin 53202, appearing on behalf of Teamsters Local Union No. 579.  
 Karmann, Buggs & Baxter, Attorneys at Law, by Mr. Stephen R. Buggs, 55 East Main Street, Platteville, Wisconsin 53818, appearing on behalf of the Village of Dickeyville.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Teamsters Local Union No. 579 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America filed a petition on May 31, 1990 requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to the provisions of the Municipal Employment Relations Act among certain employes of the Village of Dickeyville. Hearing in the matter was scheduled for July 26, 1990, and was subsequently postponed to August 31, 1990. Hearing was held in the Dickeyville Village Hall before Examiner Dennis P. McGilligan, a member of the Commission's staff. A stenographic transcript of the proceedings was completed and received by October 11, 1990. The parties submitted post-hearing briefs, the last of which was received by November 19, 1990. The Commission, having considered the evidence and arguments and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Teamsters Local Union No. 579 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein referred to as the Union, is a labor organization and has its offices at 2214 Center Avenue, Janesville, Wisconsin 53546.

2. Village of Dickeyville, herein referred to as the Village, is a municipal employer with its principal offices located at the Dickeyville Village Hall, 130 Second Street, Dickeyville, Wisconsin 53808.

3. On May 31, 1990, the Union filed a petition for an election in a bargaining unit consisting of all Department of Public Works employes of the Village. The Department of Public Works employes of the Village occupy three positions: Dale Neis - Director of Public Works; David Neis - full-time employe; and Scott Busch - part-time, temporary summer employe. The parties agree that the part-time, seasonal position currently occupied by Scott Busch is appropriately excluded from the bargaining unit. The Village, contrary to the Union, contends that the Director of Public Works position is occupied by a supervisory and managerial employe and should be excluded from the bargaining unit.

4. The Village is governed by a Village President, Robert Timmerman, and a Village Board. The Village Board exercises close control over the activities of the Department of Public Works. On March 13, 1979, the Village promoted Dale Neis to Director of Public Works. In his capacity as Director, Dale Neis gives a report to the Village Board every month concerning Public Works activities. As Director, Dale Neis serves on the Village Plan Commission. He also issues certain permits for sidewalk improvement, driveways, street and sidewalk excavations and openings, street improvements, street privileges and sewer and water. David Neis issues some of these permits in Dale's absence. In addition, Dale Neis calculates sewer and water bills for the Village, and does various sewer and water reports required by the State of Wisconsin. Said reports are compiled based on figures read from gauges, and then put onto standard forms provided by the State. Little, if any, independent judgment or decision-making is exercised compiling these reports.

5. Dale Neis is paid at the rate of \$10.32 per hour while David Neis is paid at an hourly rate of \$8.63. Dale Neis punches a time clock and submits time sheets on the same basis as David Neis. However, Dale Neis, unlike David,

has a great deal of flexibility on how he schedules his work during the 40-hour work week. He may, at his discretion, go off duty to perform his other two part-time jobs: driving a school bus and taking care of the Keeler Sanitary District. When the need to perform overtime arises, if Dale Neis has worked 40 hours in a week, he will call David Neis to see if he is available to work the overtime. David Neis is paid one and one half his hourly rate for all hours worked in excess of 40 hours unlike Dale who must ask the Village Board for pay for overtime and who usually gets hour for hour compensatory time instead.

6. Dale Neis' primary duties include maintenance of the Waste Water Treatment Plant, Water Works, park and streets in the Village of Dickeyville. He shares this work with the Village's other full-time employe, David Neis and with any seasonal employe(s). Dale and David Neis do testing at the Waste Water Treatment Plant, maintain it and assure that the plant is operating within the limits established by the DNR. In the park, they cut grass, make sure the playground equipment is safe and painted, plant and trim trees, water them and clean the restaurants and maintain the baseball diamond. They fill pot holes, repair mortar breaks and fill pavement cracks on Village streets. They put up street signs and paint curbs. The vast majority of Dale Neis's work day is spent performing these physical tasks, the same as David Neis.

7. Dale Neis does not have an office or any benefits or working conditions different from those of David Neis, except as noted above. Dale Neis has never fired, disciplined, adjusted the grievance of, promoted, transferred or rewarded any employe, or effectively recommended such action. Nor has he been advised that he has any such authority. Dale Neis has regularly assigned work to David Neis and Scott Busch, but little independent judgment was involved in making such assignments. Both Dale and David Neis largely work independently (although with consultation) in performing the DPW tasks noted above. David Neis also assigns work to Busch. As to his involvement with the hiring of Village employes, the current seasonal employe, Scott Busch, advised Dale Neis that he was interested in working for the Village during the summer. Neis advised the Village President of Busch's interest and was told that he should hire Busch if he thought Busch could perform the work. Dale Neis does not possess or exercise supervisory duties and responsibilities in sufficient combination and degree to render him a supervisory employe.

8. Dale Neis has input into the selection of projects and work carried out by the Village Department of Public Works. His input occurs both during his monthly reports to the Village Board and during preparation of the Village budget. During the budget process, Dale Neis and a consulting engineer compile a list of possible projects which is presented, along with the engineer's cost estimates, to the Village Board which makes the final decision. Dale Neis and, on occasion, David Neis negotiate with independent contractors who perform services for the Department of Public Works but, except for small projects, they seek approval from the Village President or Board before proceeding. Both Dale and David Neis can make small purchases of supplies and equipment for the Department of Public Works on their own, but larger purchases must be approved either by the Village President or Board. Dale Neis does not participate in a sufficiently significant manner in the formulation, determination and implementation of management policy or have effective authority to commit the Village's resources so as to render him a managerial employe.

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

#### CONCLUSIONS OF LAW

1. All regular full-time and regular part-time employes of the Village of Dickeyville Department of Public Works, excluding supervisory, managerial and confidential employes, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. Dale Neis, the occupant of the Director of Public Works position in the Village's Department of Public Works, is neither a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats., nor a managerial employe and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. 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 shall 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 Village of Dickeyville Department of Public Works, excluding supervisory, managerial and

confidential employes, who were employed on January 3, 1991, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employes desire to be represented by Teamsters Local Union No. 579 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for the purposes of collective bargaining with the Municipal Employer named above, or whether such employes desire not to be so represented by said labor organization.

1991.

Given under our hands and seal at the City of  
Madison, Wisconsin this 3rd day of January,

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

VILLAGE OF DICKEYVILLE

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

The sole issue is whether the Director of Public Works, Dale Neis, should be included in the petitioned for Department of Public Works bargaining unit. The Village argues that Dale Neis is both a supervisor and a manager (department head) and, therefore, should be excluded from said bargaining unit. The Union takes the opposite position.

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/

The Village notes that the Director of Public Works is paid at a higher hourly wage rate than the other permanent full-time employes (David Neis) in the Department of Public Works (DPW). The Village also notes that the Director of Public Works has a great deal of flexibility in scheduling his work during a 40-hour work week unlike the other employe mentioned above. The Village further points out that the Director of Public Works assigns work to the other employes in the DPW, and has approved overtime for the other employe.

It is true that the Director of Public Works has the authority to assign work to the other DPW employes. However, little independent judgment is involved in such assignments. The DPW work is largely self-directed and follows a regular routine. Both employes consult with each other but otherwise largely work independently in performing their DPW maintenance tasks. Occasionally they will get a suggestion from the Village President or a Board member as to a project that ought to be done.

The record also indicates that the Director of Public Works spends the vast majority of his time performing the same or similar work to the other employes in the DPW. Thus, Dale Neis spends a de minimus amount of time actually directing the work of other DPW employes.

Although the Director played a significant role in the hiring of seasonal employe Busch, he has never disciplined an employe nor been told he has authority to do so. Further, the Director has no role in the promotion or transfer of employes.

As to the significance of the Director of Public Works' higher rate of pay, we conclude it is based on his responsibilities to issue or withhold permits for various activities and projects and ultimate authority over the Village's sewer and water plant and not any supervisory authority he possesses.

Based on the above considerations, we find that, on balance, the Director of Public Works does not possess or exercise supervisory authority in sufficient combination and degree to be deemed a supervisor within the meaning of the Municipal Employment Relations Act.

We turn next to the question of whether the Director of Public Works is a managerial employe within the meaning of the Act. This issue in our view is a closer one.

In determining whether a position has managerial status, the Commission considers the degree to which individuals participate in the formulation, determination and implementation of management policy and/or possess the authority to commit the employer's resources, either by playing a significant

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1/ City of Milwaukee, Dec. No. 6960 (WERC, 12/64), Calumet County, Dec. No. 11158-A (WERC, 9/88).

role in the creation of a budget or by allocating funds for differing program purposes within a budget. Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp 1984); Kewaunee County v. WERC, 141 Wis.2d 347 (CtApp 1987).

Participation in the formation, determination and implementation of policy must be ". . . at a relatively high level of responsibility" for such participation to qualify an individual as a managerial employe. Village of Jackson, Dec. No. 25098 (WERC, 1/88), and cases cited therein. See also, Portage County, Dec. No. 6478-C (WERC, 10/87); Town of Conover, Dec. No. 24371-A (WERC, 7/87); Marathon County, Dec. No. 19130-E (WERC, 2/88) at p.5; Door County (Courthouse), Dec. No. 24016-B (WERC, 8/88), and cases cited therein.

For an employe to be managerial based upon his/her ability to allocate the employer's resources, the employes' activities must significantly affect the nature and direction of the employer's operations. Village of Jackson, supra. If the employe's input into making/drafting an original budget is not merely routine or ministerial, the employe's budgetary involvement will not warrant his/her exclusion as a managerial employe. See, e.g., Village of Jackson, supra; Portage County, supra.

The Village cites several indices of the Director of Public Works' management status. The Director of Public Works is a member of the Village Plan Commission which plans the future development of the Village. He also presents a report at the Village Board's regular monthly meeting on the activities of the Department, and makes suggestions on equipment to be purchased and future projects. The Director of Public Works also has some input into the budget process. He and the Village's consulting engineer prepare a list of potential projects for consideration by the Village Board. However, on balance, we are persuaded that the Director's role is primarily one of providing practical expertise to the Board in terms of which streets are most in need to repair etc. rather than allocating the employer's resources in a manner which significantly affects the nature and direction of the employer's operations. Particularly in light of the role which the consulting engineer plays in the Village's decision making process, we conclude that the Director does not possess sufficient managerial authority to be found to be a managerial employe.

Since we have concluded that the Director of Public Works does not possess authority or responsibilities in the necessary combination or degree so as to constitute either a supervisor or a managerial employe, we find the position is appropriately included in the proposed DPW bargaining unit.

Dated at Madison, Wisconsin this 3rd day of January, 1991.

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