

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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WCCME, AFSCME, AFL-CIO :
  
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Involving Certain Employes of : Case 1
  
: No. 44273 ME-3027
  
: Decision No. 26792
  
CITY OF NEW LISBON :
  
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Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, P.O. Box 333, Sparta, Wisconsin 54656, appearing on behalf of WCCME, AFSCME, AFL-CIO.  
Lathrop & Clark, Attorneys at Law, by Mr. William J. Roden, 122 West Washington Avenue, Suite 1000, P.O. Box 1507, Madison, Wisconsin 53701-1507, appearing on behalf of the City of New Lisbon.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTIONS

WCCME, AFSCME, AFL-CIO having, on July 10, 1990, filed a petition with the Wisconsin Employment Relations Commission to conduct an election in a claimed appropriate bargaining unit consisting of all regular full-time and regular part-time employes of the City of New Lisbon, but excluding supervisory, confidential and managerial employes, to determine whether said employes desire to be represented for the purposes of collective bargaining by WCCME, AFSCME, AFL-CIO; and a hearing on said petition having been held on October 23, 1990 in New Lisbon, Wisconsin before Examiner Lionel L. Crowley, a member of the Commission's staff; and a stenographic transcript of the hearing having been prepared and the parties having completed the filing of post-hearing briefs on December 20, 1990; and the Commission having considered the evidence and the arguments of the parties, and being fully advised in the premises makes and issues the following

FINDINGS OF FACT

1. That WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices at Route 1, P.O. Box 333, Sparta, Wisconsin 54656.
2. That the City of New Lisbon, hereinafter referred to as the City, is a municipal employer having its offices at City Hall, 218 East Bridge Street, New Lisbon, Wisconsin 53950.
3. That the parties at the hearing conducted on October 23, 1990 agreed to the following one or two appropriate bargaining units consisting of:

Voting Group No. 1

All regular full-time and regular part-time employes of the City of New Lisbon excluding supervisory, managerial, confidential, professional and craft employes.

Voting Group No. 2

All regular full-time and regular part-time craft employes of the City of New Lisbon excluding supervisory, managerial and confidential employes.

4. That the only position in dispute before the Commission is the Working Supervisor, currently occupied by Daniel A. Kallies, Jr., which the City argues should be excluded from Voting Group 1 on the basis of supervisory and/or managerial status.

5. That Kallies has been the Working Supervisor since 1986; that he directs the day to day work of the City crew and utility employes by assigning duties to these five employes on a daily basis; that if employes have a problem during the day they contact him or, if a water or sewer problem arises, Bob Yarroch, waste water operator; that Kallies collects and reviews employe time cards and submits them to the City Clerk; that Kallies has recommended wage increases for certain employes which have been approved by the City Council; that Kallies reports directly to the City Council, makes monthly reports to the Council and is the contact person for the Council should problems need their attention; that Kallies was present with the City Council during the hiring interviews of a powerhouse operator and a general laborer; in one case he, along with Council members, ranked his preferences among the applicants and in the other, the City Council hired an employe and later asked

Kallies if he had a problem with their choice; that no discipline or layoffs have taken place since his hire as Working Supervisor; that he has not been told that he has the authority to discipline or discharge employees; that the City does not have a formal evaluation system but, if asked, Kallies gives his evaluation of employees orally to the City Council; that Kallies is paid a salary which converted to an hourly rate is \$11.65/hour and the next highest paid employe is \$10.54/hour; that Bob Yarroch, waste water operator, is also paid a salary and, as salaried employes, neither Kallies nor Yarroch receive overtime pay; that Kallies punches a time clock like other employes; and that Kallies spends most of his time performing work similar to the employes he directs.

6. That Kallies was involved with the Council in the purchase of a \$18,000 truck by obtaining quotes for the auxiliary equipment that went on the truck, the box and the plow; that his only involvement in the budget process is to request necessary equipment; that he asked for a chipper and an air compressor; that after his request for an air compressor, the Mayor visited Kallies and looked at the old air compressor and talked to Kallies about it; and that Kallies repairs equipment when necessary either by having repairs made by city employes or by outside vendors.

7. That Kallies does not exercise supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employe.

8. That Kallies does not participate in the formulation, determination and implementation of policy to a significant degree or possess effective authority to commit the employer's resources.

Upon the basis of 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 New Lisbon excluding supervisory, managerial, confidential, professional and craft employes constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That all regular full-time and regular part-time craft employes of the City of New Lisbon excluding supervisory, confidential and managerial employes constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. That a question concerning representation exists within the appropriate bargaining units set forth in Conclusions of Law 1 and 2.

4. That Daniel A. Kallies, Jr., the individual occupying the Working Supervisor position, is neither a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., nor a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats. and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

DIRECTION OF ELECTIONS

1. That elections 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 following voting groups for the purposes indicated therein:

Voting Group No. 1

All regular full-time and regular part-time employes of the City of New Lisbon excluding confidential, supervisory, managerial, professional and conditionally excluding craft employes, who were employed on February 18, 1991, 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 such employes voting desire to be represented, for the purpose of collective bargaining with the City of New Lisbon on wages, hours and conditions of employment, by WCCME, AFSCME, AFL-CIO, or be unrepresented.

Voting Group No. 2

All regular full-time and regular part-time craft employes of the City of New Lisbon, excluding supervisory, confidential and managerial employes, who were employed on February 18, 1991, except such employes as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining:

- (1) Whether a majority of said employes in said voting group desire to be included in a single collective bargaining unit with those eligible employes in Voting Group No. 1; and
- (2) Whether a majority of such employes voting desire to be represented, for the purposes of collective bargaining with the City of New Lisbon on wages, hours and conditions of employment, by WCCME, AFSCME, AFL-CIO, or be unrepresented.

Given under our hands and seal at the City of Madison, Wisconsin this 18th day of February, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

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

The only issue in dispute is whether or not Daniel A. Kallies, Jr. is a supervisory or managerial employe.

UNION'S POSITION

The Union contends that Kallies does not possess sufficient supervisory or managerial duties to be excluded from the bargaining unit pursuant to MERA. It submits that his duties are similar to a leadworker or "working foreman", a position normally included in the bargaining unit. It claims that the organizational chart submitted at the hearing is a self-serving document drafted for the hearing in this matter. It insists that the most relevant evidence is Kallies' testimony that he gets together with employes in the morning to discuss work assignments and then performs duties with his crew and that the other crews act independently without further direction or checking by Kallies. It notes that if overtime is required to finish a job, employes do so of their own volition without prior approval and Kallies approves it after it has been performed. It points out that Kallies does attend City Council meetings to make reports and that Kallies' involvement in the hiring of two employes was to vote for a person who was not selected and to simply voice any objection to another employe who had been already selected by the City Council. It maintains that Kallies has no authority to discipline any employe, and although he discussed a problem with one employe with the City Council, no action was taken. It notes that Kallies is not involved in on the job training or evaluations, and although he does check time cards and approves vacation and sick leave, these areas have caused no problem and scheduling has been worked out jointly with employes. The Union claims that while Kallies is the highest paid employe, he gets no overtime and his rate of pay is based on longevity and technical skills and not for any supervisory or managerial duties.

With respect to managerial duties, the Union submits that although Kallies submits a budget, the final determination is made by the City and Kallies follows the budget and can make only minor decisions regarding established line items. It alleges that all major changes, such as repair or replacement of equipment must be approved by the City Council. The Union asserts that the Mayor's testimony is not relevant because his opinion of Kallies' responsibilities does not control the determination of his status, rather Kallies' duties are controlling. The Union points out that the City is a small governmental unit where the City Council acts with a hands-on manner and makes all the decisions and Kallies' duties are those of a working foreman acting as a liaison between the Council and employes. It submits that as Kallies is neither a supervisor nor managerial employe, he must be included in the unit.

CITY'S POSITION

The City contends that based on the facts present in this case, Kallies is a supervisor and therefore is not included in the bargaining unit. It points out that Kallies directs and assigns the City crew on a day to day basis, authorizes vacation and sick leave, checks time cards, and approves overtime. It notes that although there have been no promotions, transfers or discharges during Kallies' tenure and he has never found it necessary to formally discipline anyone, Kallies has authority to handle all disciplinary matters within the City crew. The City also alleges that Kallies has been consulted in the interviews that led to the hiring of two employes and Kallies had an equal vote with Council members. The City claims that Kallies is the sole contact person between the City Council and City employes and no other employe has the responsibility to direct City workers and, if problems arise during the day, Kallies is the one to address and take care of the problems. The City points out that Kallies' salary is the highest and he is not paid compensatory time or overtime, all earmarks of a supervisor. It asserts that as Kallies spends a majority of his time doing work similar to other employes, the extra pay is due in part to supervisory duties. The City also points out that Kallies has evaluated employes for pay raises and given evaluations to the City Council to determine whether an employe is competent.

The City maintains that Kallies' duties involve a substantial amount of independent decision making establishing him as a supervisor. It argues that to find otherwise would preclude any supervision of the City employes as well as denying the City a key management resource in maintaining the public works in the City.

With respect to managerial authority, the City claims that Kallies is involved in the budget process with respect to the purchase of new equipment and is also responsible for equipment repairs and informs the Council only if the cost of repair exceeds the worth of the equipment.

Given the foregoing, the City asks that Kallies be deemed ineligible to vote in the election.

## DISCUSSION

### SUPERVISORY STATUS

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 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/her skills or for his/her supervision of employees;
5. Whether the supervisor is 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; and
7. The amount of independent judgment exercised in the supervision of employees. 1/

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

In the instant case, the record establishes that the Working Supervisor possess some indicia of supervisory status but not in sufficient combination and degree so as to be a supervisor. He has recommended extra raises for two employes which the City Council approved. He also has some input into employe evaluations performed by the City Council. It is clear, however, that Kallies is primarily directing a work activity rather than supervising employes. He begins his day by spending 15 - 20 minutes making work assignments to five employes. If the employes have a problem during the day they either contact him or Bob Yarroch if the problem is water or sewer related. When employes have had payroll problems they have gone to Kallies, the City Clerk, Council members, and the Mayor. If an employe wants to take vacation he will leave Kallies a note or talk to him. In cases of sick leave, employes either call him or call in to the powerhouse and leave a message. Usually employes are not replaced unless absence is in the powerhouse, a twenty-four hour operation, or there are several absences at the same time. Employes do not seek prior approval for overtime work but rather perform overtime work as the job dictates. Time cards are reviewed by Kallies and submitted to the City Clerk.

Kallies, like other employes, is required to submit a time card. He neither has a written position description, nor has he even been told by the City Council or the Mayor that he has the authority to discipline employes. During Kallies' time as Working Supervisor no occasion for employe discipline has arisen. On one occasion he reported an employe's personal problem to the Council. He made no recommendation concerning same to the Council and nothing was done. Kallies sat in with the City Council in the hiring of a powerhouse operator and a general laborer. In one case a selection was made after he participated with the Council members in a vote; in the second the Council hired one of the applicants and later asked Kallies if he had a problem with their choice.

Kallies is paid a salary which is consistent with supervisory status. However, undercutting that status is the fact that Yarroch, a unit employe, also is paid a salary, and thus also does not receive pay for overtime work. Kallies testified that he is the highest paid employe because of his years of service and the difference in work he does as compared to the rest of the City crew. In explaining his answer, he testified that he does all the hot line electrical work. Thus, we conclude that Kallies is paid an additional

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

2/ Kewaunee County, Dec. No. 11096-C (WERC, 2/86).

\$1.11/hour more for his seniority and the type of work he performs, rather than his supervision of employes. Further, he spends almost his entire day working along side and performing the same work as unit members. We find Kallies to be a working supervisor.

Contrary to the City's argument, we cannot exclude Kallies based on the City's organizational structure. It might be tempting to exclude Kallies as supervisory because he is the only organizational contact between the City and the employes, but this can only be accomplished by the City. Our findings are based on the record as presented. In short, if the City would prefer to have a supervisor rather than a working supervisor, then it must delegate the necessary authority consistent with our supervisory criteria to accomplish same. Should the City decide to assign Kallies the necessary supervisory duties, it can at that time file a unit clarification petition seeking his exclusion.

In summary, we conclude that Kallies does not exercise supervisory responsibilities in sufficient combination and degree to make him a supervisor. On the current state of the record, we perceive Kallies as responsible for supervising work activity rather than employes.

#### MANAGERIAL STATUS

A managerial employe is one who participates in the formulation, determination and implementation of management policy or has effective authority to commit the municipal employer's resources. 3/ To yield managerial status, the involvement with the municipal employer's policies must be "at a relatively high level of responsibility" 4/ and "to a significant degree." 5/ Effective authority to commit the employer's resources is evidenced by significant involvement in the establishment of an original budget or by the authority to allocate funds for program purposes which differ from the original budget. 6/ However, preparation of a budget, per se, is not sufficient to establish managerial status. To confer managerial status, an individual's budget preparation duties must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. 7/ Authority to significantly affect the nature and direction of the municipal employer's operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employes to be utilized in providing services; the kind and number of capital improvements to be made; and the system by which the services will be provided, including the use of outside contractors. 8/

There is no claim that Kallies is managerial because of his role in policy making. Nor does the record support a finding that he "possess effective authority to commit the employer's resources."

Kallies does not have significant involvement in establishing an original budget. He testified that his only involvement in the budget process is to ask for necessary equipment. He asked for a chipper and an air compressor. The Mayor testified that after Kallies made his request for an air compressor he ". . . did go down there and look at it and talked to him about it, . . . ." The record does not indicate if this was done to facilitate Kallies' explanation or constituted an independent investigation by the Mayor of his recommendation. Thus, we do not believe this evidence is sufficient to establish managerial status.

Kallies was also involved with the Council in the purchase of an \$18,000 truck. The facts surrounding the purchase and Kallies' role in it are sparse and only establish that he obtained the necessary quotes for the auxiliary equipment that went on the truck, the box and the plow. Again, in our view, this is insufficient to establish managerial status. Further, Kallies testified that other employes also talk to the Council about equipment. Kallies testified that the ordering of equipment "really isn't a one-person decision." (Tr. 34) With respect to repair of equipment, Kallies does authorize needed repairs of equipment either by City employes or outside vendors. He does not, however, have the authority to purchase equipment or transfer money from one account to another.

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3/ Milwaukee v. WERC, 71 Wis.2d 709 (1976); Door County, Dec. No. 14810 (WERC, 7/76).

4/ City of Milwaukee, Dec. No. 11971 (WERC, 7/73).

5/ City of Milwaukee, Dec. No. 12035-A, (WERC, 6/73), aff'd No. 142-170 (CirCt Dane 2/74); City of New London, Dec. No. 12170 (WERC, 9/73).

6/ Kewaunee County v. WERC, 141 Wis.2d 347 (1987); Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp 1984); Milwaukee v. WERC, 71 Wis.2d 709 (1976).

7/ DePere Unified School District, Dec. No. 26572 (WERC, 8/90).

8/ Jackson County, Dec. No. 17828-B (WERC, 10/86).

All in all, it does not appear from the above that Kallies' involvement in the purchase and repair of equipment and in the budget process meets the Commission test for determining whether an employe is a managerial employe.

Given the foregoing, we find Kallies to be a municipal employe eligible to vote in the election. His responsibilities do not warrant his exclusion as a supervisory or managerial employe or as some combination thereof.

Dated at Madison, Wisconsin this 18th day of February, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner