

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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LOCAL 150, SERVICE EMPLOYEES :
  
INTERNATIONAL UNION, AFL-CIO, CLC : Case 1
  
: No. 47106 ME-3204
  
Involving Certain Employes of : Decision No. 27358
  
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VILLAGE OF STODDARD :
  
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Appearances:

Mr. John Wittenberg, Business Representative, Local 150, Service & Hospital Employees International Union, AFL-CIO, CLC, 910 Brickl Road, West Salem, Wisconsin 54669, appearing on behalf of the Union.

Sauer, Becker, Flanagan & Lynch, LTD, Attorneys at Law, by Mr. Joseph D. Becker, 401 Main Street, La Crosse, Wisconsin 54601, appearing on behalf of the Village.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

On March 2, 1992, Local 150, Service and Hospital Employees International Union, AFL-CIO, CLC, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all full-time and regular part-time employes of the Village of Stoddard, excluding all casual, seasonal and confidential employes and supervisors within the meaning of the Municipal Employment Relations Act. Hearing on the petition was held in Stoddard, Wisconsin on April 29, 1992 by Commission Examiner Coleen A. Burns. The hearing was transcribed and the transcript was received on June 2, 1992. The parties did not file post-hearing briefs. The Wisconsin Employment Relations Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. The Village of Stoddard, herein the Village, is a municipal employer and has its offices at 180 North Main, Stoddard, Wisconsin 54658.
2. Local 150, Service and Hospital Employees International Union, AFL-CIO, CLC, herein the Union, is a labor organization and has its offices at 6427 West Capitol Drive, Milwaukee, Wisconsin 53216-2198.
3. This proceeding concerns a petition for election filed by the Union in which the Union seeks to represent certain non-professional employes of the Village for purposes of collective bargaining. The Union and the Village have agreed that the collective bargaining unit sought to be represented by the Union is appropriately described as follows:

All regular full-time and regular part-time employes of the Village of Stoddard excluding supervisory, managerial, confidential, casual, seasonal employes, and all employes with the power of arrest.
4. The Village employs four full-time employes: Bernard Wopat, Maintenance Supervisor; Dan Odeen, Village Maintenance Person; Angela Ross, Village

Clerk/Treasurer; and Bob Brown, Village Police Officer. The parties agree that the individual occupying the position of Village Police Officer has the power of arrest and that the individual occupying the position of Village Clerk/Treasurer is a confidential employe and, therefore, the positions of Village Police Officer and Village Clerk/Treasurer are not appropriately included in the collective bargaining unit described in Finding of Fact 3. The parties agree that the position of Village Maintenance Person is appropriately included in the collective bargaining unit described in Finding of Fact 3. The Union seeks to represent one other employe of the Village, i.e., Bernard Wopat, A/K/A Rudy Wopat, who occupies the position of Maintenance Supervisor. The Village, contrary to the Union, contends that the position is occupied by a supervisory employe and, thus, is not appropriately included in the collective bargaining unit described in Finding of Fact 3.

5. Wopat performs the duties of the Maintenance Supervisor as set forth in the following job description:

VILLAGE OF STODDARD  
JOB DESCRIPTION  
MAINTENANCE SUPERVISOR

1. Besides being familiar with and experienced in all duties required to keep a Village functioning, he must also be able to assign and supervise other people employed by the Village.
2. The Maintenance Supervisor is responsible for a multitude of tasks and no attempt will be made to cover all of them, the following is a partial list:
  - A. MAINTENANCE OF STREETS AND ALLEYS
    1. The Supervisor is responsible for the condition of the Village streets and alleys.
      - a. Includes roads and parking lots in the Village Park.
      - b. Driveways in the Village Cemetery, etc.
    2. The condition of our streets and roads does not mean just the driving surface, but also the drainage system, which must be kept clean in order to function properly.
      - a. This means curb & gutters and storm sewer systems.
      - b. Streets must be plowed and sanded in the winter with the business district cleaned of any accumulated snow.
    3. The condition of our streets may even require painting of strips and some curb & gutter, cutting brush and weeds along some streets and roads.
    4. Reporting any malfunctioning street lights or flashing lights.
    5. The Supervisor is also responsible for installing X-mas Decor.

B. GENERAL DUTIES

1. If called upon, he may be required to assist the caretaker at the Village Cemetery with trees, driveways, etc.
2. He may also be required to work or to supervise work done in the Village Park.
3. The supervisor is also responsible for the upkeep of all Village buildings and grounds such as painting, mowing, etc.
4. He is also responsible for the operation and maintenance of all Village equipment, such as the Village trucks, snow plow, sander, rubber tired and loader, cat end loader, pick up truck, street sweeper, large street roto-rooter, pipe threader & cutter, chain saw, welder, back hoe, grader and other pieces of equipment to numerous to mention.
5. He is required to be on the job 40 hours per week, but is subject to call at any time in case of emergency.
6. He should attend at least an hour of the Village Board meeting.

C. THE OPERATION AND MAINTENANCE OF THE VILLAGE SANITARY SEWER SYSTEM EVERY DAY

1. Log in at plant.
2. Turn on sampler for sample of P.H. of final.
3. Turn on P.H. meter and put P.H. 7 on for calibration and temperature.
4. Put P.H. of 10, for cal. & temp. - rinse each time with distilled water.
5. Take sample of final and raw, then check P.H. & temp. and log.
6. Make out new flow chart, change chart and record new flow in gallons, record flow on old chart.
7. Record time clock in hours.
8. Check air flow meter.
9. Check temperature of blowers and pressure of air in blower room
10. Check oil level in blower and grease.
11. Put all information in log and figure the flow and time then log them.
12. Turn off Sampler
13. Check Chlorine tank and flow meter head.
14. Check pounds for air flow and muskrats.
15. Turn all valves once a month.
16. Check boiler room weekly and turn on oil heat when needed.
17. Log all equipment break downs and repairs.
18. Change air flow meter charts when needed.
19. Clean still when needed.
20. Clean all glass ware when needed.
21. Clean sampler tubes when needed.

SEWER PLANT

TUESDAY

1. Turn on sampler and set up for B.O.D. or

- 24 hr. test.
2. Turn on still and make water for B.O.D. test from 3,000 ML to 7,000 ML.

#### THURSDAY

1. Turn on B.O.D. meter.
2. Turn on S/S oven.
3. Take sample of distilled water and run P.H. on it, before and after putting buffer pill in.
4. Red line the B.O.D. meter.
5. Check temperature.
6. Take sample of final and raw 800 ML run P.H. on each and adjust the P.H. to between 7.5 & 6.5 with acid.
7. Zero out the B.O.D. meter.
8. Calibrate meter to 0-10 by air calibration.
9. Set up 2 blanks, put B.O.D. probe in and let set 1/2 hr.
10. Set up other bottles.
11. Once a month run duplicates and glucose.

#### SUSPENDED SOLIDS

1. Wash filter and dry in oven.
2. Weigh filter.
3. Rinse and run thru a 100 ML of final.
4. Run thru 50 ML of raw.
5. Put in over for one hour.
6. Take out and let cool.
7. Weigh filter.
8. Record weight.
9. Make more filters ahead by washing with 200 ML distilled water.
10. Shut oven off.

#### FRIDAY

1. Turn on both blowers to air clean air lines, and check air flow.
2. Sweep plant.
3. Start auxiliary motor every other week.
4. Change P.H. solution.
5. Turn blower off at end of day.
6. Check pounds for air flow, color, and sediment.
7. Do all paper work for village, water and sewer depth.

#### D. OPERATING AND MAINTAINING THE VILLAGE WATER SYSTEM

1. Flush all fire hydrants once a year and oil clean threads on hydrants.
2. Open and close valves on water system.
3. Maintaining and installing water meters.
4. Reading watermeters quarterly.
5. Repairing any leaks that occur in water system.
6. Keeping inventory of all water meters in stock and in homes.
7. Keeping records of all water used out of hydrants.

8. Responsible for finding all water shut offs.
9. Keeping of all records on the water system.
10. Repairing and painting all equipment, including upkeep of the two Pump Houses.
11. Taking necessary readings every day and required water samples for the D.N.R.
12. Periodic inspection and cleaning of the reservoir and the hill behind Pump House #1.
13. The water system must also be flushed periodically, especially on dead end lines to assure water quality.
14. Monthly reports to the D.N.R. must be filled out by a certified operator.

E. WELL HOUSE #1 & #2

#1 WELL

1. Check well at 7 AM.
2. Log in on log sheet.
3. Log hours pump ran from time clock.
4. Log gallons pumped from main water meter.
5. Log inches of chlorine used from chlorine tank.
6. Check pressure gauge.
7. Check oil level in motor.
8. Grease pump packing when starts to leak.
9. Mix chlorine when needed, 40 gal of water to 4 oz of HTH.
10. Check heater in winter and oil motor at start up.
11. Check water level in well with air pump on every Monday and when changing monthly well sheets.
12. Check chlorine residual once a week.
13. Clean chlorine pump when needed.

#2 WELL

1. Log in at well every morning.
2. Log hours pump ran from time clock.
3. Log gallons pumped from main water meter in 24 hours.
4. Log inches of chlorine used from chlorine tank.
5. Mix chlorine when needed - 20 gal. of water 20 oz. of chlorine.
6. Check chlorine res. two times a week and log.
7. Check oil level on motor.
8. Check packing on pump - grease if needed.
9. Run aux. motor for well, once a week, put on line once a quarter.
10. Check well level every Monday, and when changing monthly log sheet.
11. Clean chlorine pump when needed.
12. Check pressure gauge.

F. HOW TO CHANGE CHLORINE TANK

1. Tanks are changed approximately every three months and should weigh 150 lbs.
2. Put tank on scales.
3. Take off cap, you will find a lead gasket.
4. Take out old gasket from yoke and put in new.
5. Mount yoke assembly back on tank with new lead gasket in place and tighten yoke.
6. With tank & yoke on scales, you can set the weight of the tank by turning the little knob at the top of scales to 150 lbs.
7. Turn on tank valve one quarter of a turn.
8. Take the ammonia bottle, hold upright & squeeze at all joins & if white smoke comes, you have a leak.
9. Shut down tank valve & check joints.
10. When meter tube fills with water - take off fitting flow meter inlet, pull out meter tube, wipe off with paper towels, dry all parts off & put back together.
11. Turn tank back on one quarter of a turn.

G. LIFT STATION PROCEDURE

1. Stop at lift station every morning.
2. Turn on light - turning on exhaust fan.
3. Log in time.
4. Make out new flow chart and change.
5. Log gallon pump on front of new chart and old chart.
6. Log time that pump ran from time clock onto the back on old flow chart.
7. Check sampler and turn for sample of P.H. daily.
8. Check sampler on Wednesday for 24 hr. sample on Thursday for B.O.D. and S/S tests.
9. Check pump motor for grease.
10. Check pump for grease on drive shaft.
11. Check sump. for water.
12. Check heater.
13. Check battery weekly for charge.
14. Check green and red lights once a week - working.
15. Log all equipment that is not working.
16. Back flush pump once a month.
17. Check the check valve for sticking.
18. Clean wet well twice a year.
19. Lock door on leaving.

Wopat has been employed in the Village's Maintenance Department for 19-1/2 years. Wopat has been the Maintenance Supervisor since 1978 or 1979. Odeen has been employed as the Village Maintenance Person for approximately two years. Odeen, as Village Maintenance Person, performs all of the duties described in the Maintenance Supervisor job description except the supervisory duties. As part of his normal work duties, Wopat attends meetings of the Village Board for the purpose of providing information to the Village Board on Maintenance Department activities. During these meetings, and at other times,

members of the Village Board may assign work to the Maintenance Department. When Wopat is unavailable, Odeen attends the Village Board meetings. Generally, the members of the Village Board are not present when Village employes perform maintenance work. The Village Board relies upon Wopat to ensure that the assigned maintenance work is performed. Wopat and Odeen devote the vast majority of their work time to performing the duties set forth in the Maintenance Supervisor job description. Normally, Wopat begins the work day by checking the sewer plant and Odeen begins the work day by checking the wells. Upon completion of these duties, Odeen and Wopat meet to divide the remaining duties. Generally, the two agree upon the division of these duties. If there is a disagreement as to the division of these duties, Wopat decides who will perform the duties. If either employe completes these duties prior to the end of the work day, he consults a list of odd jobs and performs work on that list. Wopat, Odeen and members of the Village Board have authority to add work to this list as they deem appropriate. Generally, Odeen performs his work duties with little or not direction from Wopat. Odeen and Wopat are in the same work area for approximately 10 to 15% of the work day, but are not necessarily working on the same task. Once or twice a day, Wopat will go to Odeen's work site to see how things are going. Wopat devotes approximately 5% of his work time to super-vising Odeen, which supervision primarily involves assisting Odeen when Odeen is having difficulty performing a work task. As Maintenance Supervisor, Wopat earns \$11.07 per hour. As Maintenance Person, Odeen earns \$9.27 per hour. Wopat has higher DNR certification than Odeen and performs more of the welding and machine repair work. Odeen and Wopat work a forty hour week. The Village Board has established the work hours of Odeen and Wopat. Odeen has authority to determine whether or not there is an emergency which requires employes to work overtime and to assign employes to work that overtime. Odeen does not have authority to assign employes to work any other type of overtime. The Village Board has issued a directive that employes are to be available to cover the sewer plant at all times. To ensure this coverage, Odeen and Wopat are required to submit their vacation requests to the Village President by a specified time. Odeen and Wopat meet to discuss vacation selection and jointly schedule their vacations so that the Village is covered at all times. The Village President approves short-term sick leave requests and the Village Board grants long-term sick leave requests. Odeen notifies Wopat when he intends to be absent from work. Wopat relays this information to the Village Clerk or the Village President. Wopat has the authority to deny Odeen time-off in emergency situations, but has never done so. The Village has never laid off any employes.

6. The Village Board hires seasonal employes as it deems necessary and determines when seasonal employes will begin and end their employment. Wopat does not generally direct the work activity of seasonal employes. The Village Board has also hired individuals to assist with maintenance work as needed. As he deems necessary, Wopat may call in these individuals to assist with maintenance work. Normally, these individuals are called in to perform emergency work such as snowplowing. At the time of hearing, there was only one individual who was authorized to be called in to perform maintenance work. When the Village has a vacancy in a full-time position, the Village Board advertises the vacancy in the local newspaper. A committee of the Village Board screens the applications and selects the applicants to be interviewed by the Village Board. While Wopat may attend the meeting in which the Village Board interviews applicants for employment, Wopat does not participate in the interview. If members of the Village Board believe that Wopat is personally acquainted with an applicant, the members may ask Wopat to provide information about an applicant. Wopat has never recommended the hiring of any individual. There are few, if any, promotional or transfer opportunities for Village employes. Wopat has never promoted or transferred any Village employe, nor has he ever recommended the promotion or transfer of any Village employe. Lester

Helgeson was the Village President from 1973 through May of 1988. During Helgeson's tenure as Village President, Wopat was expected to bring concerns about employe work performance to the Village President and/or the Village Board. If there were any serious problems, Helgeson would impose the discipline which Helgeson deemed necessary. Gary Brosinski has been on the Village Board since 1985 and has been the Village President since January of 1990. When Brosinski became the Village President, he reviewed the Maintenance Supervisor job description with Wopat to ensure its accuracy. Wopat has never been told that he has authority to discipline or discharge employes. When Wopat is dissatisfied with an employe's work performance, Wopat will discuss this dissatisfaction with the employe. Wopat has complained to the Village President and/or Village Board about the work performance of Village employes, but has never recommended that the Village President or Village Board take disciplinary action against any employe. Following one such complaint about a part-time employe, Bryan McClellen, McClellen left the employe of the Village. Frank Mikolz was on the Village Board from 1987 through 1991. During Mikolz' tenure on the Village Board, Wopat complained about the work performance of Dave Roelig. During a period of time in which Wopat was away from the Village, Roelig met with the Village Board to discuss various concerns. Thereafter, Roelig resigned his employment with the Village. Wopat has authority to issue oral reprimands to employes who perform maintenance work for the Village, but does not have any other authority to otherwise discipline or discharge employes. Odeen has never been disciplined by Wopat. Wopat does not have authority to effectively recommend the discipline or discharge of Village employes.

8. The Village does not have a formal evaluation system. The Village Board reviews employe work performance when determining whether or not a new hire has passed the probationary period and when the Village Board grants annual wage increases. Individuals who are hired for full-time positions, are placed on probation for a period of time established by the Village Board. Members of the Village Board have asked Wopat for his opinion about the job performance of probationary employes who perform maintenance work. Wopat's opinions are taken into consideration when the Village Board makes the decision to offer permanent employment to the probationary employe. The Village Board has not continued the employment of any individual who has received an unfavorable report from Wopat, nor has the Village Board discontinued the employment of any individual who has received a favorable report from Wopat. Prior to 1992, the Village employes, as a group, met with the Village Board to discuss annual wage increases. When determining 1992 wage adjustments, the Village Board met with individual employes. Prior to 1992, the Village Board has asked Wopat for an opinion about the work performance of Village employes prior to determining the annual wage increase for the employes. The Village Board has given consideration to his opinion when determining annual wage adjustments.

9. Bernard Wopat, in his position of Maintenance Supervisor, does not exercise supervisory responsibilities in sufficient combination and degree to be deemed a supervisory employe.

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

#### CONCLUSIONS OF LAW

1. All regular full-time and regular part-time employes of the Village of Stoddard excluding supervisory, managerial, confidential, casual, seasonal employes, and all employes with the power of arrest constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a, Stats.



2. 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.

3. Bernard Wopat, the occupant of the position of Maintenance Supervisor, is not a supervisor within the meaning of Sec. 111.70(1)(o)1 Stats., but rather is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

4. The position of Maintenance Supervisor, currently occupied by Bernard Wopat, is appropriately included 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 Village of Stoddard excluding supervisory, managerial, confidential, casual, seasonal employes and all employes with the power of arrest who are employed by the Village of Stoddard on August 17, 1992, 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 Local 150, Service Employees International Union, AFL-CIO, CLC, for the purpose of collective bargaining with the Village of Stoddard 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 17th day of August, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

VILLAGE OF STODDARD

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

DISCUSSION:

The only issue to be determined is the supervisory status of the position of Maintenance Supervisor, currently occupied by Bernard Wopat. The Village, contrary to the Union, argues that the individual occupying the position of Maintenance Supervisor is a supervisory employe within the meaning of the Municipal Employment Relations Act.

Supervisory Status

Section 111.70(1)(o)1 of the Municipal Employment Relations Act (MERA) defines the term "supervisor" as follows:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Wisconsin Employment Relations Commission has, on numerous occasions, listed the following factors as those to be considered in determining whether or not an individual is a supervisor within the meaning of Sec. 111.70(1)(o)(1), Stats:

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 skill or for his/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 spends a substantial majority of his/her time supervising employes;
7. The amount of independent judgment exercised in

the supervision of employes. 1/

The Commission has consistently held that not all of the above factors need to be present, but if the factors appear in sufficient number and degree, the Commission will find an employe to be a supervisor. 2/ Even an employe who spends a majority of his/her time doing non-supervisory duties, may be determined to be supervisory where sufficient responsibilities and authority of a supervisor are present. 3/

#### Hiring Authority

At hearing, Wopat stated that the Village Board selects the individuals who are hired to be seasonal employes and determines when the seasonal employes will begin and end their seasonal employment. The record does not demonstrate otherwise.

There are two employes in the Village Maintenance Department, Wopat and Odeen. Recognizing the fact that there are situations in which the Village Maintenance Department requires additional help, the Village Board has selected certain individuals to perform the extra work. Wopat has the right to call-in the additional help as he deems necessary. 4/ Since it is the members of the Village Board, and not Wopat, who determine which individuals are eligible to be called in to perform the additional work, the Commission is persuaded that it is the Village Board, and not Wopat, which exercises hiring authority over individuals who are called in to perform the extra work.

When the Village has a vacancy in a full-time position, the Village Board advertises the vacancy in the local newspaper. A committee of the Village Board screens the applications and selects the applicants to be interviewed by the Village Board. While Wopat may attend the meeting in which the Village Board interviews applicants for employment, Wopat does not participate in the interview. 5/ If members of the Village Board believe that Wopat is personally acquainted with an applicant, the members may ask Wopat to provide information about an applicant. Wopat maintains that he had never recommended the hiring of any individual. The record does not demonstrate otherwise.

It is evident that, at times, the Village Board solicits Wopat's opinion concerning an applicant for full-time employment with the Village. It is not evident that the Village Board defers to his opinion when determining which applicant will be offered employment with the Village. Thus, the Commission is

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1/ Muskego-Norway School District, Dec. No. 10585-A (WERC, 12/91); City of Milwaukee, Dec. No. 6960 (WERC, 12/64).

2/ City of Lake Geneva, Dec. No. 18507 (WERC, 3/81); Lodi Jt. School District No. 1, Dec. No. 16667 (WERC, 11/78).

3/ City of Madison (Public Library), Dec. No. 19906 (WERC, 9/82); School District of Montello, Dec. No. 17829-B (WERC, 2/82).

4/ At the time of hearing, there was only one individual who had been approved by the Village Board to be called-in to perform the extra work.

5/ Wopat regularly attends Village Board meetings. When Wopat is unavailable, Odeen attends the Village Board meetings.

not persuaded that Wopat has authority to hire any Village employe or to effectively recommend the hiring of any employe.

#### Promotion, Transfer, Lay Off, and Recall

The Village employs two regular full-time employes in addition to Odeen and Wopat, i.e., the Village Clerk and the Village Police Officer. There is little or no opportunity for transfer or promotion. At hearing, Wopat stated that he had never promoted or transferred any employe and had never been asked to make any recommendations regarding the promotion and transfer of any employe. The record does not demonstrate otherwise. The Village has not had any layoffs and it is not evident that Wopat has any authority to lay off and/or recall Village employes.

#### Discipline and Discharge

Lester Helgeson was the Village President from 1973 through May of 1988. During Helgeson's tenure as Village President, he expected Wopat to bring concerns about an employe's work performance to Helgeson and/or the Village Board for discussion. Helgeson confirmed that Wopat had brought such matters to Helgeson's attention, but was not sure that any employe had been disciplined as a result of a complaint by Wopat. Helgeson thought that it was possible that an employe had received an oral reprimand. 6/ Helgeson acknowledged that, if there had been a serious problem, Helgeson, and not Wopat, would have imposed any discipline.

Helgeson recalled that, during his tenure as Village President, Wopat had authority to fire temporary employes, but did not have authority to fire regular full-time employes. Helgeson could not recall who had authorized Wopat to exercise such authority, but believed that Wopat had such authority because "he also let a person go once without the board knowing it and we backed him up". 7/

When Brosinski became the Village President, he and the Village Board met with Wopat to review Wopat's job description to ensure its accuracy. Brosinski does not claim, and the record does not demonstrate that Wopat was advised that he had any authority to discipline and discharge Village employes. Brosinski maintains, however, that Wopat has authority to issue oral and written reprimands to Village employes, as well as authority to effectively recommend that the Village Board suspend and/or discharge Village employes. When asked who gave Wopat such authority, Brosinski stated that "ever since I have been on the board, his word has - - - we have listened to what he has said about the employes, effectively recommend." 8/

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6/ It is unclear whether Helgeson or Wopat would have provided such an oral reprimand.

7/ T. 19 It is unclear whether the Village Board considered Wopat to have such authority, or whether the Village Board decided to accept a fait accompli.

8/ T. 54

Frank Mikolz, who was a member of the Village Board from 1987 through 1991, testified, that to his knowledge, Wopat was never given any authority to discipline or discharge Village employes. This testimony is consistent with that of Wopat, who stated that he had never disciplined or discharged any employe and that he had never been told that he had such authority.

As the testimony of the various witnesses establishes, there is disagreement as to whether Wopat has any authority to discipline and discharge employes. Upon consideration of the record as a whole, the Commission credits Wopat's testimony that he has never been told that he has any authority to discipline and discharge Village employes. However, at hearing, Wopat acknowledged that, when he is dissatisfied with an employe's work performance, he talks to the employe about his dissatisfaction. Given this testimony, the Commission credits Brosinski's testimony that Wopat has authority to issue oral reprimands. 9/

According to Brosinski, on one occasion, Wopat issued a written reprimand without consulting the Village Board. 10/ Wopat could not recall issuing a written reprimand to any employe. While the Commission does not doubt the sincerity of Brosinski's testimony on this point, the Commission is not persuaded that Brosinski has an accurate recollection of this matter. Despite Brosinski's assertions to the contrary, the Commission is not persuaded that Wopat has authority to issue written reprimands.

Neither Helgeson, nor Brosinski, claim that Wopat has authority to discharge any regular full-time Village employes. Helgeson did claim that Wopat had authority to fire temporary employes without first consulting with the Village Board. The Commission does not find Helgeson's testimony on this point to be persuasive. It is evident that the Village Board, as it is currently constituted, does not consider Wopat to have the authority to discharge either full-time or temporary Village employes.

While acknowledging that Wopat may not suspend or discharge any employe on his own authority, Brosinski maintains that Wopat has authority to effectively recommend to the Village Board that an employe be suspended or discharged. While Brosinski could not recall any incident in which a Village employe was suspended, he did recall that Wopat initiated the discharge of Bryan McClellen, a part-time employe, by advising the Village Board that the employe was not following directions.

Helgeson recalls that Wopat gave McClellen a negative recommendation. Helgeson thought that it was probable that, following this negative recommendation, McClellen had resigned his employment with the Village.

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9/ Odeen has never been disciplined by Wopat.

10/ Helgeson does not claim, and the record does not demonstrate, that he considered Wopat to have authority to issue written reprimands.

Wopat recalls that McClellen was not hired for full-time employment, but denies that he made any recommendation as to whether McClellen's employment should be continued or discontinued. According to Wopat, he told the Mayor, who was the employe's father, that the employe was late for work and that the Mayor replied that he would take care of it.

Brosinski, unlike Helgeson, believes that the Village Board discharged McClellen. Assuming arguendo, that Brosinski is correct, neither Brosinski's testimony, nor any other record evidence, persuades the Commission that Wopat's complaint, per se, was the determinative factor in the decision to discharge McClellen.

Brosinski recalls that in 1988, Dave Roelig was hired into the Maintenance Person position and placed on a six month probationary period. Brosinski further recalls that Wopat made a recommendation to the Village Board that Roelig should not be continued as an employe because Roelig did not perform his work properly and that Roelig was "let go" during his probationary period.

Helgeson recalls that Wopat gave Roelig a negative report, implying that the Village not continue Roelig's employment. According to Helgeson, thereafter, Roelig resigned from his position with the Village.

Frank Mikolz, who was on the Village Board from 1987 through 1991, does not recall that Wopat recommended that Roelig's employment be terminated. Mikolz recalls that Roelig and Wopat did not get along and that, while Wopat was away from the Village, Roelig met with the Village Board. Mikolz further recalls that, during this meeting, the Village Board decided that Wopat should have a chance to address statement's made by Roelig, but that prior to Wopat's return, Roelig voluntarily resigned his employment. Wopat recalls that he thought Roelig did a good job and that he was not consulted on the issue of whether or not Roelig should be hired as a permanent employe.

As a review of the testimony discloses, there is disagreement as to the circumstances which lead to the severance of Roelig's employment relationship with the Village. Upon consideration of all the relevant evidence, as well as the witnesses' demeanor at hearing, the Commission credits that portion of Helgeson's and Brosinski's testimony in which they state that Wopat made negative comments about Roelig's work performance. Crediting the testimony of Mikolz, who appears to have the clearer recollection of the events and is not an interested party, the Commission is persuaded that these negative comments did not cause the Village Board to terminate Roelig's employment, but rather, Roelig voluntarily resigned his employment. The Commission does not credit Brosinski's testimony that Wopat recommended the discharge of Roelig.

At hearing, Wopat denied that he had ever recommended the discipline or discharge of any employe. The record does not demonstrate otherwise. While it is evident that Wopat made complaints about employe work performance, it is not evident that such complaints necessarily result in the imposition of discipline by the Village Board. Despite Brosinski's assertions to the contrary, the Commission is not persuaded that Wopat has authority to effectively recommend that the Village Board discipline or discharge any Village employe.

In summary, the Commission is persuaded that Wopat has authority to issue oral reprimands to Village employes without first consulting with the Village Board or Village President. The Commission is not persuaded, however, that Wopat has the authority to otherwise discipline or discharge any Village employe or to effectively recommend same.

#### Authority to Direct and Assign Workforce

As part of his normal duties, Wopat attends the Village Board meetings and frequently receives work instructions at these meetings. Inasmuch as the Village President and members of the Village Board are not generally present at the work site, Wopat has the responsibility to ensure that the maintenance employes perform the work assigned by the Village Board.

Normally, Wopat begins the work day by checking the sewer plant and Odeen begins the work day by checking the wells. Upon completion of these duties, Odeen and Wopat meet to divide the remaining duties. Generally, the two agree upon the division of these duties. However, if there is a disagreement, Wopat decides which employe will have the assignment. If either employe completes these duties prior to the end of the work day, he consults a list of odd jobs and performs work on that list. Wopat, Odeen and members of the Village Board have authority to add work to this list as they deem appropriate. As Wopat deems necessary, he can call-in employes and assign these employes maintenance work. Generally, the additional help is called in to assist in emergency situations such as snow storms. It appears, therefore, that the use of such employes is infrequent.

Depending upon the type of work which needs to be done, Wopat may or may not work at the same work site as Odeen. Odeen, whose testimony on this point is uncontradicted, estimates that he and Wopat are in the same area for approximately 10 to 15% of the work day. Once or twice a day, Wopat will go to Odeen's work site to see how things are going. Wopat, whose testimony on this point is also uncontradicted, estimates that he devotes approximately 5% of his work time to supervising Odeen and that this supervision primarily involves assisting Odeen to perform a difficult work task.

Undoubtedly, Wopat has authority to direct and assign the workforce which performs maintenance duties for the Village. The Commission is persuaded, however, that Wopat devotes a *de minimis* amount of work time to the assignment and direction of the Village's work force.

As mentioned earlier, Wopat has authority to assign work to employes who are called in to perform maintenance work. At the time of hearing, there was one employe who could be called in to work by Wopat. Generally, the additional help is called in to assist in emergency situations such as snow storms. It appears, therefore, that nature of the work assigned is determined by exigent circumstances, such as the need to plow snow.

Wopat and Odeen devote the vast majority of their work time to performing the work set forth in the Maintenance Supervisor job description. The Village President and other members of the Village Board have authority to assign work to Wopat and Odeen do assign such work. Generally, Odeen performs his work

assignments with little or no direction from Wopat.

As discussed above, Wopat has authority to assign work to Odeen and to direct Odeen's work activity. However, the bulk of Odeen's duties are established by the Maintenance Supervisor job description and Odeen performs his work assignments with very little work direction from Wopat. The Commission is persuaded that Wopat exercises very little independent judgment in the assignment and direction of work to Odeen, or to any other Village employe.

#### Level of Pay

At the time of hearing, Wopat, who has been an employe of the Village for 19-1/2 years, was earning \$11.07 per hour. Odeen, who has been an employe of the Village for approximately two years, was earning \$9.27 per hour. Wopat has higher DNR certification than Odeen and performs more of the welding and machine repair work than Odeen. Given the length of Wopat's tenure with the Village, as well as his higher DNR certification, it is not evident that Wopat is compensated for his supervision of employes, rather than for his work skills.

#### Authority to Adjust Grievances and Reward Employes

It is not evident that the Village has a formal grievance procedure. Brosinski believes that if an employe had a complaint concerning his/her employment with the Village, the employe would probably bring such a complaint to the Village Board. The record does not demonstrate otherwise.

The Village does not have a formal evaluation system. The Village Board reviews employe work performance when (1) determining whether or not a new hire has passed the probationary period and (2) granting annual wage increases.

While acknowledging that the Village Board determines wage rates, including annual wage adjustments, Brosinski maintains that, when making this determination, the Village Board asks Wopat for an opinion concerning employe work performance. Brosinski's testimony on this point was consistent with that of Helgeson.

Prior to 1992, the Village employes, as a group, met with the Village Board to discuss annual wage increases. In 1992, however, the Village Board met with individual employes. Wopat denied that he was consulted when the Village Board made the 1992 wage adjustments, but neither confirmed, nor denied, that he had been consulted in the prior years.

The Commission is persuaded that, generally, the Village Board has asked Wopat for an opinion about the work performance of Village employes who perform maintenance work for the Village prior to determining the annual wage increase for these employes. The Commission is further persuaded that the Village Board gives consideration to this opinion when determining annual wage adjustments.

Once the Village has selected an applicant for a full-time vacancy in the Maintenance Department, the applicant is placed on probation for a period of time established by the Village Board. Helgeson recalled that, during his



tenure as Village President, members of the Village Board would contact Wopat to ask about the probationary employe's job performance. Helgeson further recalled that Wopat's comments were taken into consideration when the Village Board made the decision to offer the probationary employe continued permanent employment.

Brosinski recalled that, when the Village Board was deciding whether or not Odeen had successfully completed his probationary period, the Village Board asked Wopat for an opinion on Odeen's work performance. According to Brosinski, Wopat recommended that Odeen be continued as a permanent employe.

Wopat could not recall making any recommendation regarding Odeen's employment with the Village. According to Wopat, there have been occasions when the Village Board has asked his opinion concerning the continued employment of a probationary employe and there have been occasions when the Village Board has not asked his opinion concerning the continued employment of a probationary employe. Wopat maintains that when he is consulted, he does not recommend that an individual be hired or not be hired, but rather, gives an opinion as to the individual's work performance.

Helgeson could not recall any instance in which the Village Board continued the employment of an individual who had received a unfavorable report from Wopat or any instance in which the Village Board discontinued the employment of any individual who had received a favorable report from Wopat. The record does not demonstrate otherwise.

The Commission is satisfied that the Village Board considers Wopat's opinions concerning an employe's work performance when determining whether or not a new hire has satisfactorily completed the probationary period. Wopat's participation in this decision-making process, as well as Wopat's participation in the determination of annual wage adjustments, involves the use of independent judgment.

#### Work Schedules

Odeen and Wopat work a forty hour week in accordance with a work schedule established by the Village Board. Odeen has authority to determine whether or not there is an emergency which requires employes to work overtime and to assign employes to work that overtime. Odeen does not have authority to assign employes to work any other type of overtime.

The Village Board has issued a directive that the sewer plant is to be covered at all times. To ensure this coverage, Odeen and Wopat are required to submit their vacation requests to the Village President by a specified time. To comply with this directive, Odeen and Wopat meet to discuss vacation selection and schedule their vacations in a manner which ensures that the Village sewer plant is covered at all times.

Brosinski approves short-term sick leave requests and the Village Board grants long-term sick leave requests. Odeen notifies Wopat when he intends to be absent from work. Wopat relays this information to the Village Clerk or the Village President. Wopat believes that he has the authority to deny Odeen time-off in emergency situations, but that he has never done so.

CONCLUSION

As discussed above, Wopat does assist the Village Board in the evaluation of probationary employes and provides information to the Village Board which the Village Board considers when determining annual wage adjustments for employes who perform maintenance work. Additionally, Wopat has authority to assign and direct the work force and to issue oral reprimands. The Commission, however, does not consider Wopat, in his position of Maintenance Supervisor, to possess the indicia of supervisory authority in sufficient combination and degree to render him a supervisory employe within the meaning of the Municipal Employment Relations Act. Instead, we are persuaded that Wopat primarily functions as a lead worker who supervises a work activity, rather than an employe. 11/

Dated at Madison, Wisconsin this 17th day of August, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

\_\_\_\_\_  
A. Henry Hempe, Chairperson

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

11/ Our conclusion in this regard is consistent with that we reached in Village of Dickeyville, Dec. No. 26734 (WERC, 1/91).