

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

HARTFORD ASSOCIATION OF SUPPORT PERSONNEL

Involving Certain Employees of

SCHOOL DISTRICT OF HARTFORD, JT. #1

Case 36
No. 65156
ME(u/c)-1154

Decision No. 28740-B

Appearances:

Sam Froiland, UniServ Director, Cedar Lake United Educators, 411 North River Road, West Bend, Wisconsin 53090, appearing on behalf of the Hartford Association of Support Personnel.

Robert M. Butler and **Scott Mikesh**, Staff Counsel, Wisconsin Association of School Boards, 122 West Washington Avenue, Suite 400, Madison, Wisconsin 53703, appearing on behalf of the School District of Hartford, Jt. # 1.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT**

On September 14, 2005, the Hartford Association of Support Personnel (Union) filed a petition with the Wisconsin Employment Relations Commission seeking to clarify a bargaining unit of support staff employed by the School District of Hartford, Jt. #1 (District), whom the Union represents for purposes of collective bargaining, by including the position of Facilities Manager.

Hearing on the petition was held on November 9, 2005, in Hartford, Wisconsin, before Commission Chair Judith Neumann and both parties submitted written argument, the last of which was received on January 25, 2006, at which time the record was closed. The District contends that the Facilities Manager is a supervisor and/or a managerial employee who properly should be excluded from the bargaining unit, while the Union seeks to have the position included.

No. 28740-B

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. The District is a municipal employer with offices at 675 East Rossman Street, Hartford, Wisconsin. The District operates three elementary schools (Rossman, Lincoln, and Central) in the Hartford area.

2. The Union is a labor organization that serves as the exclusive bargaining representative of a unit described in the Recognition clause of the most recent collective bargaining agreement as “all regular full-time and regular part-time employees of the District, but excluding confidential employees, supervisory employees, managerial employees, professional employees, substitute employees, and summer help employees.”

3. At the time of the hearing in this case the District’s maintenance department (also called “Facilities” or “Buildings and Grounds”) was comprised of the Facilities Manager (David Diener), a Maintenance Foreman (Ed Behnke), a Maintenance employee (Tom Becker), six full-time custodians and six part-time custodians, as well as an unspecified number of seasonal employees during the summer. All except the Facilities Manager and the summer employees are members of the bargaining unit represented by the Association. The Facilities Manager reports initially on a daily basis to the Lincoln School, where the maintenance office is located and where he is responsible for general review of that building’s daily needs; the Maintenance Foreman and the Maintenance employee perform a similar role at the Central and Rossman schools, respectively. Two full-time custodians are assigned to each school and the six part-time employees “float” among the schools as assigned.

4. David Diener has been employed by the District in its maintenance department for 19 years and has held the position of Facilities Manager for four years. Until a few months before the hearing in this matter, Mr. Diener reported to the District’s Business Manager, a position that had been full-time in the District but was vacant at the time of the hearing. The District was planning to arrange with a neighboring school district to share a business manager, with the District receiving 60% of the position’s services.

5. The Facilities Manager is responsible for preparing the annual budget for the maintenance department, which requires him to assess the maintenance and construction needs of the district’s buildings and grounds and recommend expenditures. He submits this budget to the District’s Business Manager and/or Administrator, who in turn incorporate the budget into the administration’s recommendation to the School Board. The Facilities Manager has authority to expend funds as budgeted, without prior approval, and may move funds from one line item to another as he deems necessary, without prior authorization. He makes purchasing and contracting decisions regarding equipment and supplies for the District’s maintenance, remodeling, and construction needs, including selecting and contracting with outside vendors (roofers, plumbers, electricians, etc.) when he determines it is necessary to do so. He is

responsible for meeting with state and local inspectors and responding to their needs and directives. He prepares the specifications for various maintenance and construction projects and oversees the District's compliance with various regulations relating to building-related safety and health. He oversees the District's recycling plan, heating and cooling systems, and all other plans, programs, and equipment related to buildings and grounds. The Facilities Manager meets with the District Administrator and other administrators in regular staff meetings and also meets with the School Board perhaps four times per year to discuss business related to buildings and grounds, including the budget matters.

6. The Facilities Manager is responsible for directing, deploying, assigning, reassigning, and transferring all maintenance and custodial employees, subject to the transfer provisions of the collective bargaining agreement. He has established a daily routine for the custodians, who work largely without the presence of a supervisor on a day to day basis. Requests for maintenance and repairs are generally submitted to the school principals, who then convey them either to the maintenance employee assigned to that building (if they are relatively routine in nature) or to the Facilities Manager, if they are more complex or involved. The Facilities Manager then determines how the work shall be performed, i.e., by himself, by one of the two maintenance employees, and/or by an outside vendor.

7. The Facilities Manager spends between two hours per week and two hours per work day performing work similar to the work performed by the two maintenance employees. The remainder of his time is spent performing administrative tasks, such as inspection of buildings and grounds, determining and planning maintenance, repair, remodeling, and construction projects, dealing with outside vendors or other school district administrators, and supervision of employees.

8. The Facilities Manager is paid on a salary basis, which, at the time of the hearing was approximately \$50,000 per year, which is about \$10,000 more than the next highest paid employee in the maintenance department and is largely attributable to his supervisory and managerial responsibilities. He occasionally works on the evenings and on weekends, if necessary to evaluate custodial employees or to respond to an emergency. If so, he does not earn any additional or overtime pay. All other members of the maintenance department are paid on an hourly basis and are eligible for overtime pay.

9. The Facilities Manager has participated in the hiring of all maintenance and custodial employees who have been hired subsequent to his assuming his present position. His unique role in the hiring process is to review all applications, to decide which applicants to interview, and to check references. He also participates in the interview, which is conducted by a committee usually also comprising the building principal and the Maintenance Foreman. A consensus has always been reached as to which candidate to hire, with one exception. When Mr. Diener's ex-wife applied for a custodial position, he did not participate in the interview process, because of the perceived conflict-of-interest. He did recommend hiring his ex-wife, based upon her length of prior service as a custodial substitute and his view of her "loyalty" to the program, but his recommendation was overruled by the committee, who chose a different

candidate. This situation was anomalous, because it derived from his personal relationship with one of the candidates, and does not overcome his generally predominant role in the process of hiring maintenance and custodial employees. He hires summer employees entirely on his own, though they are overseen on a day to day basis by bargaining unit maintenance/custodial employees, who receive an additional stipend for doing so.

10. The Facilities Manager is responsible for training maintenance and custodial staff on an ongoing basis as needed. The Facilities Manager evaluates all other maintenance and custodial employees on a written evaluation form, which he prepares entirely by himself. While the District Administrator has recently directed that these evaluations be performed annually, they have been sporadic over the past four years. When the Facilities Manager prepares a written evaluation, he meets with the employee to discuss the evaluation. No other administrator or supervisor attends such meetings or conducts such evaluations for maintenance and custodial employees.

11. The Facilities Manager has authority to issue oral and written reprimands of bargaining unit employees and to impose discipline up to the level of discharge for summer employees, without approval of higher level administrators. No disciplinary situations beyond an oral warning/reprimand have occurred for many years among bargaining unit employees. However, the Facilities Manager has terminated the employment of one summer employee, a decision that he made and implemented entirely on his own based upon inadequate work performance by the individual. He has issued numerous oral warnings/reprimands to maintenance or custodial employees, and has issued several written corrective notices to custodial employees that have not been placed in their personnel files and were not considered disciplinary in nature. Discipline beyond a written reprimand would require the Facilities Manager to involve the District Administrator. No administrator other than the Facilities Manager and the District Administrator have the authority to discipline maintenance or custodial employees.

12. The Facilities Manager has the authority to approve or deny vacation requests and has on occasion denied a vacation request if it conflicts with another scheduled vacation. However, as a general rule, vacation and sick leave requests are subject to little or no review, but simply involve the employee calling in to the maintenance office and whoever answers the phone (usually the Facilities Manager or the Maintenance Foreman) noting the person's absence on a calendar and acquiring a substitute. The building principals have authority to approve or disapprove personal leave requests.

13. In the absence of the Facilities Manager, the Maintenance Foreman has authority to handle the day to day administrative and supervisory tasks that otherwise would be performed by the Facilities Manager.

14. The Facilities Manager has supervisory authority in sufficient combination and degree to be a supervisor.

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

CONCLUSION OF LAW

The Facilities Manager is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The Facilities Manager shall continue to be excluded from the bargaining unit represented by the Union.

Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of June, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

SCHOOL DISTRICT OF HARTFORD, JT. #1

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

The sole issue in this case is whether the Facilities Manager, presently David Diener, is a supervisor and/or a managerial employee within the meaning of the Municipal Employment Relations Act and therefore ineligible for membership in the bargaining unit.

A supervisor is defined in Sec. 111.70(1)(o)1, Stats., 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 employees, 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.

As both parties recognize, when applying this statutory definition, we consider the following factors:

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 alleged supervisor is paid for his/her skill or for his/her supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. TOWN OF BROOKFIELD, DEC. NO. 26426 (WERC, 4/90).

Not all of the above factors need to reflect supervisory status for an employee to be found a supervisor. Rather, in each case, the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employee occupying the position is a supervisor. CITY OF GREEN BAY (POLICE DEPARTMENT), DEC. NO. 31417 (WERC, 8/05).

Applying the foregoing seven factors in this case yields a clear conclusion that the Facilities Manager is a supervisor.

As to Factor 1, the Facilities Manager has a primary and to some extent determinative role in hiring bargaining unit maintenance and custodial employees. He alone screens applications and decides how many and which applicants to interview, thus independently determining the fate of many if not most applications. In addition, he participates in the interview committee, which, as is common, includes another administrator as well as a bargaining unit member. Although Mr. Diener respects the opinion of the interview team and the interview team has nearly always reached consensus on whom to hire, there is little question on this record that Mr. Diener's hiring recommendation carries primacy. As the Union points out, there is a notable exception, regarding a position for which Mr. Diener's ex-wife had applied. Diener recused himself from the interview process, but recommended his ex-wife and the District chose a different individual. However, as noted in the Findings of Fact, this situation was anomalous, and we do not view it as undermining the Facilities Manager's dominant role in the hiring process. In addition, the Facilities Manager is solely responsible for hiring summer custodial employees.

Also as to Factor 1, the Facilities Manager is the only administrator other than the District Administrator who has authority to discipline maintenance and custodial employees. He has independent authority to issue oral and written reprimands to custodial employees and has issued corrective non-disciplinary memoranda to employees. It is also significant that Mr. Diener has terminated a summer employee without consulting any other school official before or after the event. Contrary to the Union's suggestion in its brief, substantial disciplinary authority over non-bargaining unit employees can be weighed in determining supervisory status. CITY OF LAKE GENEVA, DEC. NO. 18507 (WERC, 3/81). Finally, the Facilities Manager is the only administrator who prepares written evaluations of his subordinates and participates in discussing the evaluations with the individual employees. This, as well, is an established indication of supervisory status. WALWORTH COUNTY, DEC. NO. 9041-C (WERC, 3/92); SCHOOL DISTRICT OF KEWASKUM, DEC. NO. 15407 (WERC, 4/77).

As to Factor 2, the Union suggests that the work force is in little need of direction or assignment because so much of the work is routine and/or routed through the building principals. While this is true, the routines were developed by the Facilities Manager and are subject to his revisions as needed. Moreover, there is no dispute that he determines how to and who will handle projects that are non-routine and/or complex, decisions that occur regularly throughout the work week. He alone assigns custodians to their work locations and can and does reassign employees on a temporary or permanent basis as he alone deems appropriate.

Factor 3 weighs heavily in favor of supervisory status, as the Facilities Manager is the only administrator who supervises the maintenance and custodial work force. While the Facilities Manager reports to the Business Manager, when that position exists and is filled, the Business Manager has no day to day interaction with the maintenance department staff and there is no evidence of any kind of supervisory relationship. Moreover, the maintenance department comprises a significant number of full and part-time employees (12 in all, excluding Mr. Diener), deployed in three different buildings and on two different shifts, making it reasonable that the District would need an administrator to manage and direct that group. While the record reflects slow turnover within the department (further limited by recent reductions-in-force), there have been hiring opportunities that have involved a significant expenditure of administrative time, largely on the part of the Facilities Manager.

Similarly, as to Factor 4, the record shows that the Facilities Manager, at a salary of \$50,000, is paid about \$10,000 more than the highest paid subordinate employee in the department. This is a substantial differential and, given the proportionately high level of administrative and supervisory work performed in that position, is most reasonably attributed to the Facilities Manager's status as an administrator/supervisor.

As to Factor 5 and 6, the bargaining unit members have recently raised concerns about what they perceived as an increase in bargaining unit work performed by the Facilities Manager, particularly after the District implemented reductions-in-force in the bargaining unit. However, while there may have been an increase, the evidence shows that the Facilities Manager currently spends only a small portion of his time performing the work of his subordinates. It can be as little as two hours per week and is rarely more than two hours per day. This reflects that he is more than a lead worker or a working foreman, whose role would be in the nature of supervising an activity, but rather an individual with substantial supervisory and administrative authority over the individuals performing the activity.

Finally, as to Factor 7, the Facilities Manager clearly has considerable discretion over what maintenance, construction, remodeling, and custodial work is performed as well as who will perform it and what resources will be applied to the work. The District clearly relies upon his judgment regarding the state of buildings and grounds and how to efficiently care for them, from inspecting the premises, to writing the specifications and work orders, to meeting with potential contractors and going over plans, to supervising the work during and after its performance. As discussed above, he also exercises exclusive discretion over the direction, assignment, and evaluation of the work performed by maintenance and custodial employees, as well as primary discretion over hiring such employees.

The overwhelming weight of the evidence regarding each of the foregoing factors favors a determination that the Facilities Manager is a supervisor and we have so held.

Since the record establishes that the Facilities Manager is a supervisor who cannot appropriately be included in the bargaining unit, it is unnecessary to decide whether or not he is also a managerial employee, and accordingly we decline to reach that issue.

Dated at Madison, Wisconsin, this 30th day of June, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

