

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
ELMBROOK SCHOOL DISTRICT
Involving Certain Employes of
ELMBROOK SCHOOL DISTRICT

Case 32
No. 52769 ME-780
Decision No. 28772

Appearances:

Brendel Law Offices, Attorneys at Law, by Mr. John K. Brendel, 595 North Barker Road, Suite 300, Brookfield, Wisconsin 53045, appearing on behalf of the Association of Custodians and Maintenance Employees.

Davis & Kuelthau, S.C., Attorneys at Law, by Ms. Nancy L. Pirkey, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, appearing on behalf of Elmbrook School District.

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

On June 15, 1995, the Elmbrook School District filed a petition for unit clarification with the Wisconsin Employment Relations Commission seeking the exclusion of Head Custodians, Paint Supervisor and Groundskeeper Supervisor from a bargaining unit of certain custodian and maintenance employes employed by the Elmbrook School District. Hearing on the petition was held in Brookfield, Wisconsin, on October 19, December 12 and 13, 1995, by Lionel L. Crowley, a member of the Commission's staff. During the course of the hearing, the District withdrew its request to exclude the Paint Supervisor and the Groundskeeper Supervisor. The hearing was transcribed and the parties filed post-hearing briefs and reply briefs, the last of which were exchanged on April 3, 1996. The Commission, having reviewed the matter and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

No. 28772

1. Elmbrook School District, hereinafter referred to as the District, is a municipal employer, and has its offices at 13780 Hope Street, Brookfield, Wisconsin 53005-1700.

2. The Association of Custodian and Maintenance Employees, hereinafter referred to as the Union, is a labor organization, and has its offices c/o Brookfield East High School, 3305 North Lilly Road, Brookfield, Wisconsin 53005. The Union is the exclusive collective bargaining representative for a bargaining unit consisting of approximately sixty regular full-time custodians and maintenance employees of the District. Part-time custodians employed by the District are not represented by the Union.

3. The District in its petition seeks to exclude the ten Head Custodians from the unit on the basis that they are supervisors. The Union opposes the exclusion. The position description for the Head Custodian provides, in pertinent part, as follows:

SUMMARY: The Head Custodian is responsible for all aspects of facilities management for the building to which he/she is assigned. Responsibility includes supervision of maintenance custodians, groundskeepers, shift supervisors, lead custodians and custodians (contracted and hourly) assigned to the facility. The Head Custodian is responsible for ensuring that these employees as well as other employees, contractors, vendors, etc. assigned to the building are following appropriate procedures during the course of the work. The Head Custodian manages the facility budget. Performs scheduled and emergency maintenance, develops preventative maintenance plans, and in conjunction with administration and building staff ensure the safety of all personnel within the building.

DUTIES AND RESPONSIBILITIES: The duties described below are indicative of what a Head Custodian may be asked to perform. Some duties may vary in frequency and/or other duties may be assigned that are specific to the particular building.

...

Supervision:

- Assists in interviewing, selecting, and evaluating employees in custodial and maintenance positions.
- Controls and schedules all weekend work, planned time off and monitor all unplanned time off for custodian/maintenance personnel.
- Provides positive reinforcement and coaching of all

custodian/maintenance personnel. Assists in resolving employee concerns and recommending employee discipline and termination for custodial and maintenance positions.

- Suggest, as appropriate inservice training programs aimed at increasing the skills of the maintenance and custodial staffs and/or instructing them in the latest work methods and safety precautions.

...

SKILLS AND ABILITIES

- Ability to provide direct supervision to custodian, maintenance, lead custodians and shift supervisors. Ability to effectively and efficiently determine job assignments, adjust schedules as needed. Ability to inspect and check work of subordinates. Ability to utilize effective personnel supervisory principles and practices.
- Ability to work effectively, collaboratively and positively with administration, co-workers, subordinates, other district employees, contractors, product/equipment salespersons, etc.
- Ability to plan, gather, and organize materials to be used by administration, contractors, salespersons, etc.
- Ability or (sic) organize, prioritize, and carry out work without direction.
- Ability to use good judgment and solve problems sometimes in emergencies or within tight deadlines related to operations and maintenance.
- General knowledge of building construction, maintenance procedures, mechanical, plumbing and electrical systems, and building materials. OR willing to seek training as appropriate to enhance or learn new skills.
- Knowledge of and experience in asbestos abatement work, procedures, and techniques.
- Knowledge of building and worker safety standards and procedures.
- Knowledge of policies and rules governing conduct in the workplace (School District of Elmbrook Board Policy, Employee handbooks, etc.)
- Ability to be accessible and available in the event of emergencies or when needed to meet the ongoing needs of the facilities. This may include evenings, weekends and/or holidays.

4. The District has ten Head Custodians with one assigned to each of ten schools. The ten schools are designated "A," "B" or "C," depending on size. The "A" schools are over 150,000 square feet and these are the High Schools, Brookfield Central and Brookfield East. The "B" schools are between 100,000 and 149,999 square feet and include Elmbrook Middle School, Burleigh and Wisconsin Hills Elementary schools. The "C" buildings are under 100,000 square feet and are all elementary schools: Brookfield, Dixon, Fairview South, Hillside and Tonawanda. The smaller "C" schools have one or two full-time custodians as well as part-time hourly custodians. The "B" schools have a Lead Custodian and one to three full-time custodians, part-time custodians and some have a maintenance custodian, all reporting to the Head Custodian. The "A" buildings have a Shift Supervisor, two Groundskeepers, a Maintenance Custodian and six or seven full-time custodians as well as part-time custodians, all under the Head Custodian.

The Head Custodian reports to the Supervisor of Building and Grounds and is also subject to direction by the Principal of his/her building.

5. At the "C" buildings, the Head Custodian works the day shift and is responsible for the maintenance and other duties such as lunch set ups and some cleaning as needed. The Head Custodian checks the work performed by the full-time custodian and part-time custodians, orders supplies, schedules work including overtime as needed, and meets with vendors and groups who use the building after hours and formulates a schedule of such uses. There is a second shift at these buildings where one or two full-time custodians clean the building along with part-time custodians and the custodian may set up rooms for users according to the schedule. During the summer vacation period, the custodians work on the day shift under the direction of the Head Custodian. The Head Custodians are paid \$16.69 per hour and the full-time custodians are paid \$14.08 per hour.

6. At the "B" buildings, the Head Custodian works the day shift with a Maintenance/Custodian. The second shift consists of a Lead Custodian and two or three other full-time custodians and hourly part-time custodians. The Lead Custodian has an assigned area to clean and directs the work of the other custodians. The work of the Head Custodian is similar to that of the "C" building but has greater responsibilities based on the size of the building and the number of employees. The Head Custodian is paid \$17.08 per hour, the Maintenance/Custodian \$15.66, the Lead Custodian \$14.23 and the custodian \$14.08 per hour, respectively.

7. At the "A" building, the Head Custodian is on the first shift and a Shift Supervisor is on the second shift with a number of full-time custodians as well as hourly part-time custodians. The Shift Supervisor does not have an assigned area to clean. There is a third shift with one or two full-time custodians. The Head Custodian has two Groundskeepers assigned to him/her. The Head Custodian is paid \$18.48 per hour, the Shift Supervisor \$16.14 and the custodians \$14.08, respectively.

8. With respect to hiring full-time custodians, the District employs a consensus model and uses a team concept whereby the Head Custodian, Building Principal, the Supervisor of Buildings and Grounds and the Human Resources Manager as a team interview candidates and select the best candidate based on consensus. The Head Custodian is responsible for training a new custodian and does the probationary evaluation as to the new custodian's performance and recommends whether the employe successfully completes probation, is terminated or has his/her probation period extended. The District has no formal evaluation procedure for employes who have successfully passed a probationary period.

9. The Head Custodian can give oral and written reprimands to employes under them. As to more severe forms of discipline, the Head Custodian consults with the Human Resources Manager and they reach consensus as to the amount of discipline that should be imposed including discharge.

10. The Head Custodian has the authority to change cleaning assignments and to adjust the work schedules of employes and has the authority to authorize overtime. The Head Custodian approves vacation and sick leave requests and insures that there is coverage by making sure that vacation schedules do not create an inadequate level of staffing and covers sick leave absences by rescheduling employes or authorizing overtime.

11. The occupants of the position of Head Custodian exercise supervisory responsibilities in sufficient combination and degree so as to make the occupants of that position supervisory employes.

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

CONCLUSION OF LAW

1. The occupants of the position of Head Custodian are supervisors within the meaning of Sec. 111.70(1)(o), Stats., and therefore, are not municipal employes 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 1/

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(footnote continued on Page 7)

1. The position of Head Custodian shall be, and hereby is, excluded from the bargaining unit described in Finding of Fact 2 above.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of June, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

1/ (footnote continued from Page 6)

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing.

The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

ELMBROOK SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

District

The District contends that the Head Custodian meets the statutory definition of a supervisor and should be excluded from the bargaining unit. It points out that the Head Custodian is paid significantly more than the custodians supervised. It notes that the rate for custodians is \$14.08 no matter which building they are assigned, whereas the Head Custodian at "C" is paid \$16.69 per hour, at "B," \$17.08 per hour and at "A," \$18.48, a difference of \$2.61 or 18.5%, \$3.00 or 21.3% and \$4.40 or 31.3%, respectively. It submits that the reason for the large pay differential is obvious as the Head Custodian has significantly more responsibility in supervising custodians, assigning work, training and evaluating new custodians, serving on interview teams, recommending discipline, assigning and approving overtime, approving vacation and other leave requests and administering the operations and maintenance budget for the building. It claims that the Head Custodian has the authority to effectively recommend hiring decisions. The District asserts that the Head Custodian sits on interview committees and the record shows that in the last four years the District has hired for 21 different custodial positions, with 17 being in the bargaining unit, and in all 21 cases, the Head Custodian was on the interview committee and gave his recommendation. It argues that the decision to fill a vacancy is based on consensus and the Head Custodian has at least an equal role as to who to hire. It points to the testimony of Building Principals who deferred their judgment to the Head Custodian as to who to hire because the Head Custodian is more familiar with the position and must work directly with the person hired. It concludes that the Head Custodian has significant involvement in the hiring process. It points out that the Head Custodian conducts all performance evaluations during a new custodian's probationary period and recommends successful completion, termination or extension of the probationary period. It argues that these recommendations are not a mere formality but carry significant weight and can affect the future employment of probationary employees.

The District alleges that the record demonstrates that the Head Custodian has the authority to effectively recommend discipline and has exercised this authority. It observes that the record is filled with examples of discipline issued by the Head Custodians in all three sizes of schools including examples of terminations upon the Head Custodian's recommendation or mutual agreement between the Head Custodian and the Human Resources Manager. It admits that the

Head Custodian does not have full and complete authority to discharge employes they supervise and must consult with the Human Resources Manager; however, the record establishes that the Head Custodian is actively involved in recommending discipline as well as the appropriate level and signs the discipline notices and attends the disciplinary meeting with the employe.

The District takes the position that the Head Custodian uses independent judgment in making work and overtime assignments. It points out that the Head Custodian adjusts work assignments, hours of work and authorizes overtime, as well as establishing vacation schedules and approving vacation and sick time. It submits that the record establishes that the Head Custodian has independent authority to authorize both scheduled and unscheduled overtime.

The District asserts that the Head Custodian supervises a significant number of employes. It notes that there are 61 employes in the bargaining unit ultimately under the direction of the Director of Buildings and Grounds and the Director directly supervises the ten Head Custodians and other employes such as the Paint Supervisor and Groundskeeper Supervisor. It argues that if the ten Head Custodians are found not to be supervisors, the Director would be the immediate supervisor of 50 custodians in the ten schools plus the part-time custodians, an inequitable result. It insists that the Building Principals do not directly supervise the custodians and do nothing that allows them to be viewed as supervisor of the custodial staff.

The District concludes that the record establishes that the position of Head Custodian is supervisory and properly excluded from the bargaining unit.

Union

The Union contends that the criteria to determine whether an employe is a supervisor is 1) the number of employes supervised and the number of other persons exercising greater, similar or lesser authority over the same employes; 2) pay for skill or supervision of employes; 3) primarily supervising an activity or employes; 4) working supervisor or not; and 5) budgetary duties to effectively commit the employer's resources to determine the type and level of services as well as the manner and means by which those services are delivered.

The Union argues the Head Custodians are really "foremen" and all ten have the same job description regardless whether they are the sole janitor or have two or three people technically under their supervision. It points out that the job description requires them to do extensive manual physical labor and gives them no powers other than to suggest how to better perform the job activities. It submits a review of the criteria makes it clear that there is neither any legitimate reason, need, criteria or explanation for the bringing of the instant petition.

With respect to hiring employes, the Union notes that all part-time custodians are hired by the Human Resources Manager and the Supervisor of Buildings and Grounds. It points out that a

Head Custodian cannot hire an additional employe without approval. It acknowledges that a Head Custodian can make a recommendation concerning the hiring or firing of an individual but the ultimate determination is for the Human Resources Manager. It observes that all letters of hire come from the Human Resources Manager. In order to fill an opening or replace an employe, the Union maintains that the Head Custodian must make a request to do so, and the Head Custodian can neither transfer nor shift change any employe.

With respect to discipline and termination, the Union argues that no Head Custodian may terminate an employe on his/her own unless the Human Resources Manager feels satisfied that it should be done and the Manager typically writes the termination letter. It submits that the Human Resources Manager can override the decision of any Head Custodian with regard to termination. It claims that the testimony establishes that the Head Custodians do not have the right by independent judgment to hire, transfer, promote, discharge or assign any of the people they oversee.

As to the number of employes supervised, the Union notes that at five of the elementary schools, the Head Custodian is the only employe at the time he is working unless something unusual happens. It observes that a custodian works the second shift and the Head Custodian is not present. It maintains that the Head Custodian at larger schools may have one or two employes to supervise, but the vast majority of custodians are on the second shift under a lead worker who supervises more employes than the Head Custodian. It insists that the Head Custodian is generally in charge of maintenance work.

The Union argues that the Head Custodian is directly supervised by the Director of Buildings and Grounds and the Building Principal. As for authorizing overtime, the Union observes that the Director of Buildings and Grounds sets the maximum number of hours for overtime and the Head Custodian cannot exceed this without permission. It concludes that the Head Custodian supervises technically no one but himself in five instances and clearly supervises an activity rather than employes. It contends that the Head Custodian is paid for his job performance and not for supervision.

The Union alleges that the Head Custodian is a working supervisor and does the same work as those he supervises. It refers to Hillside where the head Custodian spends 90% of his time at physical labor. It maintains that the evidence demonstrates that Head Custodians are primarily working people as opposed to supervising and directing others.

The Union takes the position that the Head Custodian is not permitted to make policies but only to implement those of the District. It submits that the Head Custodian cannot contract for services, force overtime and at most can only give verbal warnings. As to evaluations, according to the Union, the Head Custodian must rely on the night supervisor as the Head Custodian does not directly observe the night people. It argues that the Head Custodians have next to no ability for independent judgment or discretion in the supervision of employes.

As to the budget, the Union states that the evidence established that the Head Custodian has absolutely no vote in determining the amount of the budget or what it will be spent for. It notes each school is given a certain amount earmarked for maintenance and operations and can recommend an increase of this amount by approximately 3% each year. The Union observes that all purchase orders must be signed by the Principal. It concludes that at most, the Head Custodian can make some suggestions but must utilize what he is given to accomplish the job duties during the school term. The Union is of the opinion that the Head Custodians fall dramatically short and deficient in the criteria of a supervisory employe and the petition should be denied.

District's Reply

The District points out several errors in the facts stated by the Union. It states that at three of the six elementary schools, the District employs from two to five custodians, not just one as alleged by the Union. It further objects to the Union's assertion that the petition in the instant matter was brought for "illegitimate purposes."

The District contends that the Union understates and misrepresents the nature and extent of the work performed by the Head Custodians. It agrees that Head Custodians do not have the absolute authority to hire, fire, discipline, transfer or promote bargaining unit employes but they do have the authority to effectively recommend such actions. It submits that the ability to effectively recommend such actions is all that is needed to meet the statutory definition of a supervisor.

The District claims that the Union understates the job duties contained in the job description. It points out that one of the Head Custodians who testified indicated that the job description accurately summarizes his job duties and Head Custodians have the authority to effectively recommend discipline and termination of employes. It also argues that the Union overstates the amount of bargaining unit work performed by the Head Custodian. It agrees that a Head Custodian does not spend 100% of his time supervising staff, but he/she need not do so to meet the definition of a supervisor and someone who spends a majority of his time doing bargaining unit work nonetheless satisfies the criteria to be excluded as a supervisor. It disputes the Union's claim that the Head Custodian is simply a "working foreman" and argues that the evidence refutes the Union's arguments and establishes that the Head Custodian effectively recommends decisions on hiring, transfers, promotions, discipline and discharge and the Head Custodian supervises employes, not activities. It requests the exclusion of the Head Custodian based on the conclusion that it is a supervisory position.

Union's Reply

The Union contends that for over 25 years the Head Custodian has been recognized and accepted as non-managerial or non-supervisory and no material change of circumstances having

taken place, it should be accepted that the Head Custodian is not a supervisor. It submits that although the Head Custodian has been invited to sit in on hiring new employees, so do Union representatives, the Principal, Athletic Director, teachers and parents. As to overtime, the Union argues that the Head Custodian's authority to use overtime is controlled by the requirements placed on him/her by the Director or Buildings and Grounds or the contract, e.g., if one employee is absent, the Head Custodian doesn't use overtime; however, if two are absent, then overtime is okayed but the ability to count a loss of one or two does not empower one with mere administrative duties. It takes the same position with respect to "building checks." As to vacation scheduling, the Union submits that the Head Custodian merely gathers them and forwards them for approval and there has not been a problem over all the years except on one occasion when the Director of Building and Grounds objected. It concludes that the Head Custodian has no discretion as to who gets vacation. The Union states that it is apparent that the Head Custodian does not train a new custodian; rather, this function is performed by the Lead Custodian or Shift Supervisor and as to discipline, anything above an oral comment comes from the Human Resources office.

As to the higher pay, the Union notes that there is a higher scale for going up the ladder for all the various levels and the additional pay is an incentive to work up in grade and because of the additional complications required of maintenance men at the larger schools.

The Union distinguishes the cases cited by the District on the basis that the Head Custodians do not perform the same function, Laona School District, Dec. No. 22825 (WERC, 8/85) or their inclusion or exclusion made no difference in the result of an election, Somerset School District, Dec. No. 24968-A (WERC, 3/88) or two employees out of a large group made no difference. West Bend Joint School District No. 1, Dec. No. 28491 (WERC, 8/95).

The Union disputes the District's claim that the School Principal does not supervise the Head Custodian and maintains that the Principals stay on top of things and take an active interest in the efforts of the Head Custodian and are directly and clearly in a supervisory and directory position over Head Custodians. It seeks denial of the petition.

DISCUSSION

Section 111.70(1)(o)1, Stats., defines a supervisor as:

. . . 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.

Under that statute, the Commission considers the following factors in determining if the occupant of a position is a supervisor:

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 skills or for his 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 time supervising employes; and
7. The amount of independent judgment exercised in the supervision of employes. 2/

In addition, the Commission has historically held that not all of the above-quoted factors need be present, but if the factors appear in sufficient number and degree, the Commission will find an employe to be a supervisor. 3/

The Head Custodians have the authority to effectively recommend the hiring of employes. The record demonstrates that the Head Custodian is part of a hiring team that reaches consensus on who is hired and the Head Custodian's participation is equal or greater to the rest of the hiring team. 4/ In the area of discipline, the record establishes that the Head Custodians have exercised

2/ Milwaukee Public Schools, Dec. No. 6595-C (WERC, 5/96).

3/ Taylor County, Dec. No. 27360 (WERC, 8/92).

4/ Tr. 24, 273, 281, Ex. 17.

the authority to issue oral and written reprimands to employees and to effectively recommend other discipline up to and including termination. 5/ The Head Custodians consult with Victoria Keller, Human Resources Manager, prior to taking more severe disciplinary actions to insure that proper documentation is made and to benefit from her expertise, but this consultation does not mean the Head Custodians lack the authority to effectively recommend discipline. 6/ As to probationary employees, the Head Custodians evaluate them and effectively decide whether they should be retained. 7/

The Head Custodian has the authority to direct and assign work to employees in his/her building. Because much of the work is routine and because of the different hours and in the smaller schools where there is a small number of employees, such direction does not require a great deal of independent judgment. The Head Custodian does check the work performed by employees and has the authority to shift employees around when shortages occur and can authorize overtime as long as he/she stays within the overtime limitations imposed on the building. 8/ The Head Custodian also coordinates and approves vacation schedules.

The Director of Building and Grounds directly supervises the Head Custodians and thus indirectly supervises the employees whose work the Head Custodians direct. Thus, at present (and if the Head Custodians continue to be included in the unit), the Director is the only supervisor for over 50 employees. Building Principals at all schools and Lead Custodians and Shift Supervisors at "B" and "A" schools, respectively, have and/or exercise substantially less authority to direct and supervise custodians than do the Head Custodians.

The record establishes that at a number of "C" schools, the majority of the Head Custodian's time is spent doing maintenance and custodial work rather than supervising employees and that at

5/ Tr. 35, 36, 37, 49, 53, 288, 328, Ex. 39-49.

6/ Tr. 102, West Bend Joint School District No. 1, Dec. No. 28491 (WERC, 8/95) at p. 15.

7/ Tr. 30, 32, Exs. 33-38.

8/ Tr. 27, 28, 117, 128, 187, 301, 324, 326, 335.

the "B" and "A" schools, some maintenance/custodial work is also performed.

The Head Custodian at "C" schools is paid \$2.61 per hour more than the custodian and \$1.03 more than a maintenance custodian. At the "B" schools, the differential is \$3.00 and \$1.42 and the "A" differential is \$4.40 and \$2.82, respectively. We are satisfied the pay differential is for more than their expertise and reflects their supervisory responsibilities and duties. 9/

9/ Tr. 111, 291.

The present case is very similar to our recent decision in West Bend Joint School District No. 1, Dec. No. 28491 (WERC, 8/95) in which we found nine Head Custodians (six of whom worked alone at elementary schools on the first shift but supervised other employes on the second shift) to be supervisors. In the instant case, Head Custodians have more supervisory responsibility than those in West Bend (primarily because of their involvement with hiring), and we are persuaded that the Head Custodians possess sufficient indicia of supervisory status to be found to be supervisors and are therefore excluded from the bargaining unit described in Finding of Fact 2. 10/

Dated at Madison, Wisconsin, this 26th day of June, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

10/ We have not considered the evidence with respect to the Head Custodians' budgetary duties as these are significant only to the extent that a claim of managerial status is made. Kewaunee County v. WERC, 141 Wis.2d 347 (CtApp III, 1987). The District has offered no such claim. We do note that to the extent the parties disagreed over the scope of the Head Custodians' budget/policy making authority, it is the school board which typically makes policy; managerial employes typically only implement and administer it.