

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WHITEHALL EDUCATIONAL SUPPORT PERSONNEL,  
COULEE REGION UNITED EDUCATORS**

Involving Certain Employees of  
**WHITEHALL SCHOOL DISTRICT**

Case 18  
No. 56469  
ME-942

**Decision No. 29286-B**

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Appearances:

**Mr. James C. Bertram**, Executive Director, Coulee Region United Educators, 2020 Caroline Street, P.O. Box 684, LaCrosse, Wisconsin 54602-0684, appearing on behalf of Whitehall Educational Support Personnel, Coulee Region United Educators.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by **Mr. Richard J. Ricci**, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Whitehall School District.

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

Whitehall Educational Support Personnel, Coulee Region United Educators filed a petition on May 5, 1998, requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of Whitehall School District employees by including the High School Administrative Secretary, Elementary Secretary, Accounting Assistant, and Maintenance Supervisor.

No. 29286-B

A hearing in the matter was held on January 13, 1999, in Whitehall, Wisconsin, before David E. Shaw, an Examiner on the Commission's staff. Prior to the commencement of the hearing, the parties stipulated that the two secretaries be included in the unit and that the Accounting Assistant be excluded from the unit as an exempt confidential employee. The District opposed the inclusion of the Maintenance Supervisor (Richard Sosalla) on the basis that he is a supervisor and/or a managerial employee.

The parties submitted written arguments, the last of which was received on March 24, 1999.

The Commission, having reviewed the matter and being fully advised in the premises, makes and issues the following

#### **FINDINGS OF FACT**

1. Whitehall Educational Support Personnel, Coulee Region United Educators, hereinafter referred to as the Union, is a labor organization with its principal offices located at 2020 Caroline Street, P.O. Box 684, LaCrosse, Wisconsin 54602-0684.

2. Whitehall School District, hereinafter referred to as the District, is a municipal employer with its principal offices located at 19121 Hobson Street, Whitehall, Wisconsin 54773-0037. The District maintains and operates a K-12 public school system in Whitehall and Pigeon Falls, Wisconsin. At all times material herein, Jerry Freimark has held the position of District Administrator for the District.

3. The Union is certified as the exclusive bargaining representative for a bargaining unit consisting of "all regular full-time and regular part-time employees of the Whitehall School District, excluding professional, confidential, supervisory, and managerial employees." WHITEHALL SCHOOL DISTRICT, DEC. NO. 29286-A (WERC, 2/98).

4. The District maintains and operates three buildings: a kindergarten through first grade school in Pigeon Falls, Sunset Elementary School in Whitehall, and Memorial High School in Whitehall. The K-1 building in Pigeon Falls is approximately seven miles from the other two buildings in Whitehall. All three of the school buildings require periodic custodial and maintenance/grounds work.

5. On July 1, 1983, Richard Moquin was hired as a janitorial supervisor. Moquin has been excluded from the bargaining unit as a supervisor and reports directly to Freimark. When Moquin first started, he was supervising five employees. In 1985 or 1986, the District

hired a groundskeeper and Moquin supervised that person. Shortly thereafter, Moquin took over the maintenance department in addition to his other duties, since the maintenance person was getting ready to retire.

6. In 1991, Richard Sosalla was hired as a maintenance worker and reported to Moquin. In 1996, at Moquin's suggestion, responsibility for the custodial and maintenance/grounds departments was informally divided so that Moquin would be responsible for the custodial area and Sosalla would be responsible for the maintenance/grounds area. On April 27, 1998, the Board approved the creation of separate supervisory positions for the two departments due to the overall work load and because of Moquin's recurring absences (due to back problems and vacations) left employees unsupervised during those absences. Effective July 1, 1998, Moquin's title was changed to Custodial Supervisor and Sosalla's title became Maintenance Supervisor. Both Sosalla and Moquin report directly to Freimark.

7. Although Freimark offered some suggestions, Moquin and Sosalla drafted the job descriptions for their respective positions. Moquin's job description, as Custodial Supervisor, states as follows:

"The custodial supervisor is responsible for the custodial staff of the Whitehall School District. This position is not only supervisory, but includes a variety of duties. The supervisor assigns duties to be done by custodial staff and also has his/her own daily duties and responsibilities.

Responsibilities and duties include:

1. To coordinate custodial activities.
2. To develop and control custodial budgets.
3. To evaluate the performance of each custodial worker.
4. To coordinate work activities with administrators and teachers.
5. To be responsible for records, reports, supplies, requisitions, storage and movement of supplies and custodial equipment.
6. To train custodial employees on the use and storage of equipment, supplies, procedures and work schedules.
7. To make phone calls and receive calls pertaining to custodial or school related problems during the work day, evenings or weekends.
8. To make recommendations to the administration for repair or replacement of custodial equipment.
9. To work with MacNeil Company on updates and training.
10. To plan, supervise and coordinate the work of the custodial workers during the school year and summer period, and also, coordinate maintenance activities in the absence of the maintenance supervisor.

11. To plan the custodial budget and order supplies as needed and assist with the maintenance budget.
12. Confers with the maintenance supervisor and other administrators concerning the care and upkeep of the building and their contents.
13. To assist with checking furnaces for proper operation on weekend days during cold or severe weather.
14. To observe or warn of any misuse of property.
15. To assist with the delivery of mail and depository bags, the collection and delivery of recyclable materials, the delivery and set-up of Christmas trees, the hauling of food commodities to the schools as needed, unloading and storage of supplies, clean up from lunch program, etc.
16. Assist with snow removal from sidewalks and parking areas, transfer of equipment such as bleachers, chairs, risers, as needed; care and use of custodial equipment.
17. To attend all suggested applicable workshops, meetings, seminars and conferences approved by the district administrator.
18. To attend school board meetings when applicable.
19. To obtain substitute employees when custodian is absent.
20. To assist with hiring and replacing of custodial staff.
21. To receive training on the techniques and procedures of asbestos maintenance.
22. To do monthly inspections on fire extinguishers, update safety reports, assist with asbestos inspections and asbestos repairs.
23. Other assignments as assigned by the district administrator and school board.”

Sosalla’s job description, as Maintenance Supervisor, states as follows:

“The maintenance supervisor is responsible for the maintenance, operation and care of the physical plant, indoor and outdoor equipment and grounds for the Whitehall School District. This position is not only supervisory, but includes a variety of skills and duties. The maintenance supervisor assigns work to be done and is a working supervisor in that he/she also has work responsibilities.

Responsibilities and duties include:

1. To coordinate maintenance activities.
2. To develop and control maintenance budgets.
3. To evaluate the performance of each maintenance worker.
4. To coordinate work activities with administrators and teachers.

5. To be responsible for records, reports, supplies, requisitions, storage and movement of maintenance equipment and supplies.
6. To train maintenance employees of the use and storage of equipment, supplies, procedures and work records.
7. To make phone calls and receive calls pertaining to maintenance or school related (sic) problems during the work day, evenings or weekends.
8. To make recommendations to the administration for repairs or replacement of maintenance equipment.
9. To work with MacNeil Company on safety updates and training.
10. To plan, supervise and coordinate the work of the maintenance workers during the school year and summer period, and also, coordinate custodial activities in the absence of the custodial supervisor.
11. To plan the maintenance budget and order supplies as needed and assist with the custodial budget.
12. To have some knowledge for repair and/or diagnosis of problems with the heating systems; (carpentry) for repairs of doors, woodwork, windows, floors, ceilings and roofs; (electrical) for repairs or replacement of light switches, outlets, light ballasts, as well as, (sic) any other minor electrical problems; (plumbing) for cleaning, replacing or repairing faucets, drains, toilets, sinks, etc.; (painting) inside and outside as needed and to select paints for the various rooms or areas.
13. To assist with checking furnaces for proper operation on weekend days during cold or severe weather.
14. To observe or warn of any misuse of property.
15. To assist with the delivery of mail and depository bags, the collection and delivery of recyclable materials, the delivery and set up of Christmas trees, the hauling of food commodities to the schools as needed, unloading and storage of supplies, clean-up from lunch program, etc.
16. Assist with snow removal from sidewalks and parking areas, transfer of equipment such as bleachers, chairs, risers, as needed; care of maintenance equipment.
17. To attend all suggested applicable workshops, meetings, seminars and conferences approved by the school district superintendent.
18. To attend school board meetings when applicable.
19. To obtain substitute employees when needed.
20. To assist with hiring and replacing of maintenance staff.
21. To receive training on the techniques and procedures of asbestos maintenance.

22. To do monthly inspections on fire extinguishers, update safety reports, assist with asbestos inspections and asbestos repairs.
23. Other assignments as assigned by the superintendent and school board”.

8. Moquin and Sosalla share an office in Whitehall where they write up work orders. Separate files are maintained at the office for the two departments. At the time of the hearing, two employes, Ed Nelson and Bob Gueltzow, reported to Sosalla. Nelson had recently been hired for a half-time position in the custodial department and a temporary half-time position in the maintenance department as a replacement for an employe on an extended leave of absence for a disability, Gary Pampuch. Because Nelson’s duties fall under two departments, he reports to Moquin when doing custodial work and to Sosalla when doing maintenance work. Nelson works at the two Whitehall school buildings.

Gueltzow has been employed by the District for about 15 years, and works six hours per day in both of the maintenance and custodial areas at the building in Pigeon Falls. Gueltzow is the only such employe at that building. Gueltzow has been working at the building in Pigeon Falls for approximately the past year or two. Gueltzow also spends two hours per day doing custodial work at the elementary school in Whitehall. Sosalla continues to be responsible for Gueltzow when Gueltzow is performing those duties in Whitehall even though the work is custodial in nature.

Sosalla was also in charge of an employe who did some painting and other minor maintenance items, but has left the District’s employ. In addition, Sosalla would be in charge of summertime student help, but this had not yet occurred at the time of hearing.

The type of work performed by Nelson and Gueltzow is routine in nature and is usually done independently, including changing light bulbs and furnace filters, and keeping the buildings’ heating systems lubricated. If either of the maintenance/grounds employes do not speak to Sosalla right away in the morning, they follow a regular routine. Once Sosalla has trained people on how to change lights and filters, to perform greasing and minor plumbing, and to run and maintain a lawn tractor and sharpen its blades, they generally work on their own.

Sosalla speaks to Nelson and Gueltzow on a daily basis and will typically call Gueltzow every morning at Pigeon Falls to see what he has planned and may inform Gueltzow about such things as when the Univent furnace filters need to be changed, as Sosalla keeps all of these schedules, or other things he wants Gueltzow to do. Sosalla goes to the Pigeon Falls building on the average of three times per week for a total of eight hours to see what needs to be done and to do maintenance such as working on the Univent systems, etc. Sosalla and Nelson both work in the Whitehall school buildings. Prior to Nelson taking over Gary

Pampuch's duties, Sosalla was in communication with Pampuch constantly. Nelson and Gueltzow are required to check in with Sosalla before doing certain major work, such as working on bearings or motor problems in the heating system. Sosalla adjusts Nelson's and Gueltzow's routine, if necessary, where a task arises that needs priority attention.

9. Moquin and Sosalla have overlapping authority in that when either is absent, the other is in charge of the absent person's employees in addition to his own. Also, if one of them is in another part of the District, the other is free to call on employees in the other department for help. Both Moquin and Sosalla work along side the employees.

10. Sosalla, along with Moquin and Freimark, was involved in the hiring of Nelson for the half-time custodial position/half-time longterm substitute maintenance position. Sosalla's level of participation included discussing with Freimark the need to hire someone, Sosalla's name being placed in a newspaper advertisement along with Moquin's as a person to contact, screening (along with Moquin) written applications or speaking to those who called in about the position, and recommending to Freimark who to interview, scheduling the interviews, and taking turns asking questions along with Moquin and Freimark during the interviews. While most of Sosalla's involvement was done jointly along with Moquin, it was Sosalla who first spoke with Nelson and it was Sosalla who told Nelson to come in for the interview. Sosalla did the reference checks on the final two applicants, including Nelson. Both Sosalla and Moquin recommended to Freimark that Nelson be hired and Freimark took the recommendation to the Board, which then made the final decision to hire Nelson.

11. Sosalla has the authority to evaluate the work performance of Nelson and Gueltzow. Moquin is no longer responsible for evaluating the maintenance/grounds employees, and no longer evaluates Sosalla. Evaluations are formally done through written forms at the end of the District's fiscal year in June and, at time of hearing, had not yet occurred. Because Nelson works half-time in the custodial department and half-time in the maintenance/grounds department, Sosalla will only evaluate that portion of Nelson's position which relates to maintenance and grounds. Sosalla has been informally evaluating Nelson's and Gueltzow's work performance, attitude, promptness and neatness, by observing them whenever he works with them.

Sosalla has the independent authority to issue oral and written reprimands but has not had occasion to do so since being promoted. If a maintenance/grounds employe has a problem, he is to go to Sosalla first, before speaking to the District Administrator. Further, any complaints about maintenance or grounds employees are to be directed to Sosalla.

Moquin has disciplined one employe in the last five years giving an employe an oral and written reprimand for not reporting to work and for not doing his job.

Sosalla and Moquin have the authority to recommend a suspension of an employe to Freimark, who then makes the final decision.

With regard to the transfer or promotion of employes, Sosalla had some minor input in the decision to change Teresa Wineski's position from a half-time kitchen/half-time custodial position to a full-time custodial position, agreeing with Moquin and Freimark that Wineski was doing a good job in the kitchen and giving his opinion as to Wineski's custodial skills.

Sosalla's annual salary is \$23,500 and has been frozen at that level since the Union's certification on February 27, 1998 and pending the results in this case. By comparison, Nelson and Gueltzow are paid at an hourly rate of \$8.42, or the annual equivalent of \$17,600. Moquin, a fifteen year employe, has a salary of \$29,000. Sosalla, like Moquin, does not receive any overtime pay, but receives straight compensatory time off when working more than 40 hours per week and keeps track of this time himself. Prior to becoming Maintenance Supervisor, Sosalla did receive overtime pay.

Sosalla's normal work day runs from 7:00 a.m. to 4:00 p.m., unless snow removal is required. In that case, Sosalla sometimes starts his day as early as 4:00 a.m. by calling Nelson to come in and plow snow.

Sosalla spends about 30 percent of his time supervising employes.

Sosalla has exercised independent authority in authorizing overtime for such things as snow plowing or for work resulting from a break in the plumbing. Sosalla also verifies and signs Nelson's and Gueltzow's time sheets and has granted Gueltzow a personal leave request without going to Freimark. In addition, Sosalla has independently approved Nelson's and Gueltzow's vacation requests.

Sosalla obtains outside substitutes when maintenance/grounds employes are absent. The names of these substitutes are on a list which was created by both Moquin and Sosalla.

Sosalla usually meets once a week with Moquin and Freimark to discuss project needs, areas of concern, or personnel matters. There are also informal discussions where Sosalla or Moquin may stop in Freimark's office to discuss an issue individually or together.

12. Sosalla's participation in the budgetary process starts in May or June of each year when he and Moquin report to the Board on proposals for needed projects in their respective departments. The Board then determines which projects are priorities. If the Board determines a project to be a priority, then Moquin or Sosalla would get prices and report back to the Board so that the cost of such projects are built into the upcoming budget. Also as part of the budget preparation, Moquin and Sosalla jointly submit a typed form to Freimark which



includes line items, such as parts and supplies. Sosalla and Moquin determine how much money is needed for such line items in their respective departments on that form. For example, Sosalla projects how much money is needed for painting, equipment needs, repair parts, grounds gasoline, and maintenance vehicle gasoline. If an area in the maintenance department needs to be cut, Freimark would ask for Sosalla's recommendation. When Sosalla recommends that a maintenance line item be deleted, Freimark usually follows that recommendation.

On one occasion, Sosalla found that there was not enough monies for a line item, and recommended to Freimark that money be moved from one line item to another, which Freimark accepted. Freimark ultimately compiles the total budget to be submitted to the Board for consideration and approval.

13. Sosalla possesses supervisory authority in sufficient combination and degree to be a supervisor.

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

### **CONCLUSION OF LAW**

The incumbent in the position of Maintenance Supervisor, Richard Sosalla, is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and is therefore not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

**ORDER CLARIFYING BARGAINING UNIT**

The bargaining unit described above in Finding of Fact 3 is hereby clarified to exclude the Maintenance Supervisor.

Given under our hands and seal at the City of Madison, Wisconsin this 8th day of July, 1999.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**WHITEHALL SCHOOL DISTRICT (SUPPORT STAFF)**

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

**Union**

Regarding alleged supervisory status, the Union contends that Sosalla does not possess supervisory authority in sufficient combination or degree to make him a supervisor within the meaning of the Municipal Employment Relations Act (MERA). The Union asserts that it is disproportionate to have two supervisors for six employees. The District should not be allowed to exclude this position from the bargaining unit by spreading one supervisor's job duties around to another person and/or by giving that other person occasional supervisory tasks. LINCOLN COUNTY, DEC. No. 20687 (WERC, 7/94). Further, the District should not be permitted to create an organizational structure with an excessive number of supervisors given the amount of supervision necessary for such few employees and the type of work involved. A more rational organizational structure for the District would be one supervisor and one lead worker for six employees, or one supervisor for seven employees.

The Union maintains that the record does not support a finding of supervisory authority. Sosalla's involvement in hiring is minimal. There was only one person hired into a full-time position, and Moquin testified that he, not Sosalla, made the decision to hire or effectively recommended the promotion/transfer of Teresa Wineski. With regard to the scheduling of substitutes, whether short-term or long-term, Sosalla's involvement was nothing more than the gathering of personnel data, which is not indicative of exercising supervisory authority. Sosalla has not issued any real discipline without first checking with Freimark. If Sosalla or Moquin become aware of an employee's rule infraction, they report to Freimark instead of dealing with the employee themselves. Thus, they do not exercise any disciplinary authority at their level. Regarding authority to direct and assign the workforce, Sosalla's duties are routine and involve the supervision of activities, rather than the supervision of the employees themselves. The Union points out Sosalla testified he has not done any formal evaluations because he has not been employed long enough in his new position. Even though Sosalla does his own mental notetaking of employees' work habits, Sosalla has not informed employees that he observes them. Further, Sosalla has not received any training or orientation for formal evaluations other than his own experience of being evaluated by Moquin.

In terms of the number of employees supervised and the number of persons exercising greater or similar authority over the same employees, the Union claims that Sosalla cannot reasonably be characterized as a supervisor. First, Sosalla only allegedly supervises two employees. Second, there is little training done by Sosalla except for such things as changing

light bulbs, filters, greasing, and lawn mower blade sharpening, and such training is a one-time occurrence. Sosalla did not supervise any seasonal employee last summer, as that individual was the responsibility of Moquin. Third, since one of the employees Sosalla allegedly supervises, Gueltzow, works 25 percent of his workday after Sosalla is finished working at 4:00 p.m., Sosalla is not supervising the employee for an entire eight-hour day.

While Moquin and Sosalla have similar authority over four employees and two employees respectively, Freimark has greater authority than either of them, and the ultimate authority for any and all decisions is the Board. There is no need demonstrated by the District to justify having three persons in two levels below the Board to supervise six employees. Freimark's testimony stressed an efficient structure of organization. It would be more efficient, with no duplication or redundancy, to have one person in each of two levels below the Board, i.e., the District Administrator and one Supervisor, to supervise unit employees.

The District does not need another supervisor when Moquin is absent. The problem that occurred when Moquin was absent was that needed work did not get done. Since the District has not shown that there were personnel problems during Moquin's absences, all that the District needs is a lead worker clothed with authority to direct project work. There is no need to have two persons doing Moquin's job.

Both Sosalla and Moquin spend a majority of their time doing their own non-supervisory work and directing employee projects and spend less than one-half of their respective time supervising personnel matters. Thus, the time spent actually supervising employee personnel matters is equivalent to less than one full-time position.

The pay differential between Sosalla (\$23,500) and those that he supervises (\$17,600) supports a conclusion that Sosalla is being paid for his work skills in his non-supervisory capacity. Although Freimark testified to an intention to give Sosalla a raise due to his supervisory position, his current pay does not indicate he is a supervisor.

As to alleged managerial status, the Union argues that Sosalla has only a limited role in finalizing the District's budget and only a routine role in implementing the budget. He does not participate in the formulation, determination and implementation of the District's budget. Sosalla creates his budget by getting prices and numbers of the budget line items, and then cooperatively piecing it together with Moquin's custodial budget. At that point, the District Administrator makes the decision on what budget proposals are acceptable to him. Although Sosalla can make his pitch to Freimark, Sosalla's budget can be and has been, adjusted by Freimark. Moreover, it is Freimark who has final responsibility for the budget with the Board. Sosalla can only make routine expenditures. Thus, Sosalla is not a managerial employee.

Finally, the Union contends that the District has not presented any need to transfer managerial responsibilities to Sosalla. The District has a long-time supervisor/manager in Moquin. Moquin has fewer employes to supervise and less to be in charge of now than prior to Sosalla becoming Maintenance Supervisor. The need for Moquin to do more non-supervisory duties belies the contention that the District needs to transfer some of Moquin's managerial duties to a second manager.

### District

The District asserts that the Maintenance Supervisor should be excluded from the bargaining unit because he possesses sufficient supervisory indicia to be considered a supervisor under MERA, as well as sufficient managerial responsibilities that warrant exempting him as a managerial employe.

As to supervisory status, not all of the indicia of supervisory status need be present to find supervisory status, rather, if a sufficient number of the criteria are present, the employe will be found to be a supervisor. TAYLOR COUNTY, DEC. NO. 27360 (WERC, 8/92). The frequency or infrequency with which an employe exercises supervisory authority is not itself determinative of the question of supervisory status. FOREST COUNTY, DEC. NO. 17528-B (WERC, 6/85). In addition, even though an employe may spend a majority of his or her time performing non-supervisory duties, that person is still deemed a supervisor where sufficient responsibilities and authority of a supervisor are present. SHAWANO COUNTY, DEC. NO. 7194-A (WERC, 10/84).

The District maintains that its custodial and maintenance departments are two separate and distinct departments. The split of these two departments was partially due to the work load, and partially due to the failure of the employes to get the work done during times when Moquin was off work due to back problems and taking vacation, which left employes unsupervised. As a result, the Board elected to create separate departments, each with its own supervisor, but with an overlap in authority over each other's staff in the event that one of the supervisors was absent.

The District contends that in preparation of the proposed split of responsibilities, Moquin and Sosalla worked together to develop the new job descriptions. These are, by design, almost identical. Moreover, the small size of the pool of employes supervised does not disqualify an employe from having a supervisory status. VILLAGE OF NECEDAH, DEC. NO. 28192-B (WERC, 10/95).

The District argues that the Maintenance Supervisor position meets the criteria of a supervisory position because it has authority "to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes". Sosalla has the authority to recommend

promotions, and since the creation of the Maintenance Supervisor position, Sosalla participated in the decision to promote former part-time custodian Wineski to a full-time custodian. Further, it was at one of the management team meetings that Sosalla recommended moving Wineski to full-time and looking for another part-time employe.

With regard to hiring, Sosalla has the right to effectively recommend new hires and is involved in the total hiring process, along with Moquin. Sosalla was involved in the hiring process for the part-time custodial position left vacant by the promotion of Wineski because that position affected both the custodial and the maintenance departments. During the process of hiring Nelson, both Moquin and Sosalla received calls from applicants. Sosalla took Nelson's application and then had him come in to talk about the position. The "management team" of Freimark, Moquin and Sosalla met to discuss applicants to interview. Sosalla set up the interviews, the team interviewed the applicants, Sosalla conducted the reference checks on the two candidates interviewed, and the three met again to discuss the reference checks. Sosalla recommended that the District hire Nelson, and that recommendation was followed.

With regard to handling complaints, Sosalla has responsibility for receiving employe complaints or grievances and has received some minor complaints from maintenance employes. Sosalla also has the authority to give oral or written reprimands without prior approval from Freimark, as well as to recommend suspensions – although Freimark would get involved at that level. While Sosalla has had "discussions" with employes, there has not been anything that has required a reprimand.

With regard to layoffs, Sosalla has the authority to recommend a layoff.

The position has the authority to direct and assign the workforce. Sosalla is responsible for directing the work activities of Pampuch and Gueltzow, and has been supervising Nelson on a part-time basis since Nelson has been filling in for Pampuch. In the event the District hires any seasonal employes to perform grounds or maintenance work, the position will also have the responsibility for directing the work activities of those employes. Sosalla has sole responsibility for checking on the work of Pampuch (currently Nelson) and Gueltzow. Sosalla schedules all of the work of the maintenance employes by either talking to them in person or by phone on a daily basis. While maintenance employes have their regular routine and generally know what to do when reporting to work in the morning, if there is something out of the ordinary that needs attention, Sosalla directs them to the needed task. The maintenance employes are also required to check with Sosalla before beginning some types of work, e.g., work on major problems, such as motor repair for the heating system.

Sosalla has the authority to approve vacation, sick leave and personal leave requests on his own, e.g., Sosalla approved Gueltzow's personal leave request. Further, Gueltzow has the

authority to change an employee's work schedule, such as when Sosalla called Nelson to come in as early as 4:30 a.m. for snow removal. Sosalla is also responsible for scheduling substitutes or replacements for maintenance employees who are absent, and he is authorized to approve overtime without consulting Freimark. Only in the event of a major budget impact would Sosalla have an advance discussion with Freimark. Sosalla has authorized overtime for snowplowing as well as for a plumbing break.

As the Maintenance Supervisor, Sosalla is the only supervisor for the District's other two maintenance workers. He supervises two full-time maintenance employees as well as any seasonal employees hired to perform maintenance or grounds work. Custodial Supervisor Moquin supervises three full-time custodians and one half-time custodian. Moquin and Sosalla perform the same supervisory responsibilities for their respective staffs. They report directly to Freimark, and along with Freimark, comprise the "management team" responsible for all custodial and maintenance operations within the District. Although Moquin and Sosalla each have full supervisory authority for his own staff, there is a planned overlap so that in the absence of either one, the other has full authority to supervise all custodial and maintenance employees, avoiding the type of problem which had occurred when Moquin was absent for leaves and vacation. Further, Moquin no longer supervises the maintenance employees, except in the absence of Sosalla. Sosalla, not Moquin, will be evaluating Gueltzow and Pampuch at the end of the 1998-99 school year, as well as Nelson for his four-hour long-term substitute position for Pampuch.

Sosalla's compensation will be based upon his supervisory duties. Moquin, who has been with the District for fifteen years, has a salary of \$29,000 for 1998-99. Sosalla, who has been with the District for eight years as its primary maintenance worker, is also compensated on a salary basis, but his salary is frozen at the 1997-98 rate of \$23,000. This is due to Sosalla's current inclusion in the bargaining unit, which is in the midst of negotiating the initial contract. As a result, Sosalla has not received a pay increase since assuming the Maintenance Supervisor position. If the position is found to be exempt from the bargaining unit, then Sosalla will be meeting with the Board to discuss an increase in salary for the 1998-99 school year. Contrary to Sosalla, Gueltzow and Pampuch are each paid an hourly rate of \$8.42, or the equivalent of \$17,600 for 1997-98. Moreover, Sosalla receives no overtime pay. He receives compensatory time only for extreme situations where he puts in extra time snowplowing or other extra work and it is at straight time. Sosalla keeps track of his own hours and does not receive compensatory time for coming in every weekend to conduct boiler checks.

The Maintenance Supervisor primarily supervises employees rather than activities. Sosalla is responsible for annually evaluating maintenance employees beginning with the 1998-99 school year. Because he is new to the position, Sosalla has not yet conducted a formal

evaluation, which is done in May or June of each school year. He has begun the process in advance of the formal process by assessing the maintenance employees' work, their attitude, and their promptness and neatness on an ongoing basis.

Sosalla trained Gueltzow in maintenance work and assesses his work on a regular basis. Although Gueltzow had been a custodian with the District for 15 years, he transferred to the Pigeon Falls school within the past year or two, and is now responsible for both the maintenance and custodial work at Pigeon Falls, with the exception of the more major maintenance work that is performed by Sosalla. Gueltzow was new to maintenance work and needed to be trained in that regard. Although Pampuch is not new to grounds and maintenance work, Sosalla trained him how to adjust mowers and the correct way to sharpen blades. When Nelson was hired to substitute for Pampuch, Sosalla trained Nelson in the use of tractors, as well as directing him in the work he would be performing as a substitute for Pampuch. Sosalla also is responsible for verifying the time sheets of the maintenance employees.

Sosalla is a working supervisor who spends a substantial amount of time supervising employees, as well as performing managerial duties. Both Sosalla and Freimark estimate that Sosalla spends half of his time on supervisory activities and the other half performing his regular maintenance work. Included in the half time that Sosalla spends in a supervisory capacity is the time spent performing managerial duties. Both Sosalla and Freimark definitely consider Sosalla to be a supervisor.

The District's "management team" - Freimark, Moquin and Sosalla - formally meet approximately once per week, but they have numerous informal discussions related to operations within the custodial/maintenance areas. Moquin and Sosalla share an office within the high school building, where they can be reached or where messages can be left for them. Sosalla calls Gueltzow at Pigeon Falls every morning to make sure that everything is running smoothly there and to check if there are any problems. During the heating season, Sosalla checks to see what Gueltzow is doing with the heating system with reference to switching it back and forth. Sosalla estimates that he is at the Pigeon Falls school approximately three times, or approximately eight hours, per week. During those visits, Sosalla supervises Gueltzow in the performance of his work. During Pampuch's leave, Sosalla also instructs Nelson on a day-to-day basis on the work he needs to perform.

While Sosalla is the District's major maintenance person, he is performing fewer maintenance duties since being promoted to Maintenance Supervisor because he has delegated more duties to Gueltzow and Pampuch. As Maintenance Supervisor, Sosalla's responsibilities also include budget work and lining up contractors for work that needs to be done.



Sosalla possesses the authority to exercise independent judgment in supervising Gueltzow and Pampuch, and at present, Nelson, in that he alone directs their work, approves their leave requests, authorizes overtime, adjusts their schedules, and can issue oral or written reprimands without Freimark's approval, as well as decide whether to hire substitutes.

The Commission has previously found that positions such as Sosalla's, e.g., Head Custodian or Director of Maintenance, are supervisory in nature under MERA. The District concludes that the position of Maintenance Supervisor is supervisory and should be excluded from the bargaining unit.

The District also argues that the Maintenance Supervisor position should be excluded from the bargaining unit because the position is, at least in part, managerial in nature. The position possesses the effective authority to commit the District's resources and to allocate its funds. Furthermore, Sosalla's recommendations with respect to creating the budget are sought by both District Administrator Freimark and the Board, and have been followed. Therefore, the responsibilities undertaken by the Maintenance Supervisor establish the managerial status of the position.

### DISCUSSION

Section 111.70(1)(o)1, Stats., defines a "supervisor" in pertinent part 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 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.

When evaluating a claim of supervisory status under Sec. 111.70(1)(o)1, Stats., 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 or assign the workforce;
3. The number of employees supervised, and the number of persons exercising greater, similar or lesser authority over the same employees;

4. The level of pay, including an evaluation of whether the supervisor is paid for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. ONEIDA COUNTY, DEC. NO. 24844-G (WERC, 6/98).

Not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors are present in sufficient combination and degree to warrant finding the employee to be a supervisor. WALWORTH COUNTY, DEC. NO. 29378 (WERC, 5/98).

We are persuaded that Richard Sosalla, as Maintenance Supervisor, possesses supervisory authority in sufficient combination and degree to be considered a supervisor within the meaning of the statute.

The record shows that the District made a decision to move from a single janitorial department to separate maintenance/grounds and custodial departments and to have Moquin and Sosalla each supervise separate areas and employees. The fact that creating two departments results in having an additional supervisor does not make this organizational structure inherently suspect. The District, as the employer, may align itself in a reasonable fashion to accomplish its organizational needs. The record does not support the contention that the District is merely spreading Moquin's supervisory responsibilities around so as to create unnecessary layers of supervision. Instead, the record demonstrates that the District was pursuing the legitimate management interest of having a consistent supervisory presence over its maintenance/custodial employees.

The record establishes that Sosalla's duties and responsibilities are supervisory in nature. Sosalla has the independent authority to issue verbal and written reprimands. Sosalla meaningfully participated in the hiring of Nelson, one of his two subordinates. Contrary to the Union, Nelson is not simply a long-term substitute who Sosalla scheduled to work. Rather, the record indicates that he was hired as a temporary, half-time grounds maintenance and regular half-time custodian.

While much of the maintenance/grounds employees' work is routine, this does not inevitably lead to the conclusion that Sosalla does not exercise supervisory authority in the direction of their work. Sosalla independently changes Nelson's and Gueltzow's tasks and checks with them as to what they are doing on a daily basis.

Further, Sosalla evaluates their work. Although Sosalla has not yet had occasion to make any formal evaluations, he monitors the daily activities of Nelson and Gueltzow. The record does not support the Union's contention that Nelson and Gueltzow are not aware of Sosalla's authority to make ongoing visual evaluations of their work.

Admittedly, the number of employees supervised is small. However, when Sosalla is present, it is clear that he is the individual who exercises supervisory authority over these employees.

The difference between Sosalla's current wages (\$23,500) and those of the employees he supervises (\$17,600) is not necessarily indicative of Sosalla's supervisory status, as his wages have been frozen since the Union was organized and thus have not been changed since he assumed the Maintenance Supervisor position. It is noted that Sosalla does not receive any extra pay for working overtime, unlike those employees that he supervises.

Sosalla independently authorizes overtime pay, verifies and signs employees' timesheets, approves personal leave and vacation requests, and schedules substitutes from a list which he helped create. Although the actual percentage of time spent supervising others is in dispute, we are satisfied that the amount of time is significant and regular. Moreover, the overlapping of supervisory authority when one supervisor is absent or unavailable supports a conclusion that the exercise of such authority is meaningful.

While Sosalla has not yet performed certain supervisory functions such as adjusting grievances, recommending layoffs, or disciplining an employee, the record establishes that this is either due to the infrequency with which such events occur or the short length of time that Sosalla has been in his new position and not to a lack of authority on his part. In that regard, Moquin cited only once instance where he had disciplined an employee within the last five years and there are no instances cited in the record where discipline has instead been imposed by someone other than Sosalla.

In summary, as reflected in VILLAGE OF NECEDAH, DEC. NO. 28192-B (WERC, 10/95), even where the number of employees supervised is small and the supervisor spends less than a majority of his time supervising employees, a finding of supervisory status is warranted where, as here, the supervisor has significant authority in the hiring and discipline of employees and exercises independent authority in the direction and assignment of the employees.

Given the foregoing, we are persuaded that Sosalla, as Maintenance Supervisor, possesses supervisory authority in sufficient combination and degree to be a supervisor and thus is not a municipal employe. Therefore, we have ordered that the Maintenance Supervisor be excluded from the bargaining unit. Having reached that conclusion, we do not address whether or not the Maintenance Supervisor is a managerial employe.

Dated at Madison, Wisconsin this 8th day of July, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

