

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

AFSCME COUNCIL 40

Involving Certain Employes of

CITY OF PLATTEVILLE

Case 20
No. 57697
ME-3657

Decision No. 29388-B

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of AFSCME Council 40.

vonBriesen, Purtell & Roper, S.C., by **Mr. Charles P. Magyera**, 411 Office Building, Suite 700, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4470 and **Mr. Alan J. Probst**, City Manager, City of Platteville, P.O. Box 780, Platteville, Wisconsin 53818, appearing on behalf of the City of Platteville.

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

On September 3, 1998, AFSCME Council 40 filed a petition with the Wisconsin Employment Relations Commission seeking the clarification of a bargaining unit comprised of certain employes of the City of Platteville by including therein the Housing Director. The City opposes the petition by contending that the Housing Director is a supervisor and/or a managerial employe who must continue to be excluded from the bargaining unit.

No. 29388-B

Hearing was held in Platteville, Wisconsin, on February 22, 1999, before Examiner Amedeo Greco, a member of the Commission's staff. Both parties thereafter filed initial briefs and the City filed a reply brief that was received on April 23, 1999. AFSCME advised the Examiner on May 12, 1999, that it was not filing a reply brief.

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

FINDINGS OF FACT

1. AFSCME Council 40, herein the Union, is a labor organization that maintains its principal offices at 8033 Excelsior Drive, Madison, Wisconsin.

2. The City of Platteville, herein the City, is a municipal employer, that maintains its principal offices at 75 North Bonson Boulevard, Platteville, Wisconsin.

3. After the Union won a representation election conducted on June 30, 1998, the Commission on July 20, 1998, certified the Union as the exclusive collective bargaining representative for a jointly agreed-upon bargaining unit of the City's employees consisting of:

“all regular full-time and regular part-time employees of the City of Platteville, excluding supervisory, managerial and confidential employees, library and museum employees, utility employees and employees in existing bargaining units.”

4. Prior to the election, the Union and the City agreed in May, 1998, that the Housing Director - then and now Joanne Reese - was a supervisor or a managerial employee who should be excluded from the bargaining unit. Pursuant to that joint stipulation, Reese has been excluded from the jointly agreed-upon bargaining unit up to the present.

5. The job description for the Housing Director states in pertinent part:

COMMUNITY PLANNING & DEVELOPMENT DEPARTMENT JOB DESCRIPTION

HOUSING DIRECTOR - 3201

GENERAL STATEMENT OF JOB:

Performs a variety of routine and complex administrative and technical work for Federal and State Housing and Community Development programs in providing services to individual tenants and families; maintains financial records; oversees operation of the Housing Division of the Community Planning & Development Department.

EXAMPLES OF WORK PERFORMED:

Section 1. Specific Activities

- 1.1 Supervises and administers the programs and services of the Housing Division, including the Community Development Program and the Fair Housing Program, pursuant to adopted plans, regulations, and budgets.
- 1.2 Administers programs of the Platteville Housing Authority and serves as its Executive Director.
- 1.3 Interviews homeowners, landlords, and tenant applicants to determine eligibility for Housing Division programs.
- 1.4 Performs interviews for annual and interim recertifications to determine tenant/applicant eligibility and rent.
- 1.5 Documents problems including tenant integrity violations.
- 1.6 Prepares rehabilitation housing loans, including required documentation.
- 1.7 Negotiates Community Development Contracts with homeowners, landlords, and contractors.
- 1.8 Responds to questions relating to the City's housing programs; refers people to most appropriate staff member or area human service agencies.
- 1.9 Consults with other social service agencies regarding housing programs.
- 1.10 Supervises preparation of monthly checks and vouchers for landlords; CD checks and vouchers; records checks received by CD participants.
- 1.11 Receives Fair Housing related complaints; resolves complaints when possible, or forwards to applicable agencies; maintains records on all complaints.
- 1.12 Oversees preparation of reports required for federal and state compliance and auditing purposes including:

1099 forms for the Section 8 programs
1098's for the Community Development Program
Occupancy reports
Quarterly requisitions
Operating Statements
Periodic Financial and Utilization Reports
Federal Budget Contracts.

- 1.13 Maintains updates of Federal Regulations, state codes, handbooks, and Housing Authority Administrative Plan.
- 1.14 Maintains Federal and State contracts for funding sources for housing programs.
- 1.15 Markets all Housing Division programs via brochures, posters, and use of other media; provides public information.
- 1.16 Manages and supervises housing operations to achieve goals within available resources; plans and organizes workloads and staff assignments; trains, motivates and evaluates assigned staff; reviews progress and directs changes as needed.

Section 2. Peripheral Activities

- 2.1 Serves as Secretary to the Community Development Board and the H.A. Board.
- 2.2 Performs receptionist assistance for other divisions within the department; refers public to appropriate staff members.
- 2.3 Performs other duties as requested or as needed.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

Follow written, verbal or diagrammatic instructions; several concrete variables. Arithmetic calculations involving fractions, decimals, and percentages. Knowledge of principles, objectives and procedures of HUD program. Working knowledge of accounting procedures.

Proficient in using word processing, spreadsheet, and database software.

Skill in the operation of listed tools and equipment.

Ability to compose original correspondence, follow technical manuals, and have constant contact with people. Ability to communicate effectively, verbally or in writing, with customers and general public to provide information; suppliers/vendors for supplies; Federal/State governmental or regulatory agencies to consult about rules and regulations of HUD. Ability to use judgment with reason; ability to handle stress due to federal regulations and tenant and landlord conflicts. Ability to organize and initiate own work projects. Employee will be familiar with details of job to do it well within 6 to 9 months.

TOOLS AND EQUIPMENT USED:

Computer with proficiency in using word processing, spreadsheet, and database software; typewriter; adding machine; telephone; copy machine; fax machine; paper shredder.

CONFIDENTIAL DATA:

Confidential information includes program participants' income, bank accounts, family status, disabilities, age.

...

ACCEPTABLE EXPERIENCE AND QUALIFICATIONS:

The following elements serve to identify the required acceptable experience and qualifications:

1. Minimum education: High School Degree, or GED equivalent, Bachelor's Degree in Accounting, Finance or related field preferred, plus 2-3 years of other schooling to include accounting/financial record keeping, and
2. Related work experience or 1-3 years in assisting low and moderate income persons with Federal housing.
3. Knowledge of Federal & State funding programs and regulations related to housing and community development assistance.

4. Proficient in using word processing, spreadsheet, and database software.
5. Any equivalent combination of education and experience.

...

POSITION ACCOUNTABILITY:

REPORTS TO: Community Planning & Development Director.

SUPERVISION EXERCISED: Limited term and work study employees report to Housing Director. Supervisory responsibilities include instructing, reviewing work, assigning work, planning work of others, acting on employee problems.

SELECTION GUIDELINES:

Formal application, rating of education and experience; oral interview and reference check; job related tests may be required.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

6. Reese performs all of the duties in the Housing Director job description.
7. Reese also holds the position of Executive Director of the Housing Authority. In that role, she is in charge of local HUD programs and is responsible for the Housing Division's budget of \$62,196 which she helps prepare. HUD determines exactly how much money is to be spent on its programs and how much is to be spent on the City's administrative expenses. Reese also helps manage the City's Community Development budget which provides for loans for housing rehabilitation. The State of Wisconsin determines what portion of those funds must go for loans and what part goes for the City's administrative expenses.

Reese does not have the authority to purchase any items costing more than \$150-\$200 without permission.

8. From about 1980 to 1997, Reese served as the Director of Community Development Loans and from about 1987 to 1997 served as the Director of Community Planning and Development. In July, 1997, Reese was removed from these two positions and her pay was reduced. In November, 1997, the City hired Steve Van Steenhuyse to serve as its new Director of Community Development and Planning and supervision of the Zoning Coordinator, the Building Inspector, and the Assistant Building Inspector passed from Reese to Van Steenhuyse.

9. After her job duties were changed in 1997, Reese prepared a Housing Director's Responsibilities Report which is an accurate description of her current job. It states:

DEPARTMENT OF COMMUNITY PLANNING AND DEVELOPMENT

HOUSING DIRECTOR'S RESPONSIBILITIES REPORT

COMMUNITY DEVELOPMENT PROGRAM - 50%

The Housing Director is responsible for the Administration of two Community Development Programs for the Department of Community Planning and Development. The two housing rehabilitation programs are referred to as the Director of Development (DOD) and Wisconsin Housing and Neighborhood Conservation Program (WHNCP). Administration includes the supervision of Limited Term Employees and Work Study staff.

PROGRAM MANAGEMENT AND COMPLIANCE

- * Write and administer the Housing Rehabilitation Procedures Manual.
- * Develop and design brochures and pertinent material to market programs.
- * Administer one and one half million dollar budget to address the housing needs of the low and moderate income residents of Platteville.
- * Complete State and Federal monitoring and compliance reports.
- * Administer, monitor, and service all Community Development Loans.
- * Develop Loan Sets in compliance with regulations.
- * Interview Homeowner and Landlord Applicants and answer other program inquiries.
- * Investigate and screen loan applicants - credit research and lien checks, etc.
- * Collect loan materials for presentation to the CD Board.

- * Negotiate Construction Contract with Homeowner, Landlord and Contractors.
- * Draft and complete Mortgages, Subordinations, Satisfactions, Promissory Notes, Notice of Recissions, Lien Waivers, Truth and Lending, Construction Contracts, Change Orders, etc.
- * Prepare amortization schedules.
- * Maintain a ledger sheet for each ongoing project that details correct amounts and contractor payments.
- * Turn all cash receipts and requests for transfer of funds from money market to checking accounts over to City Treasurer.
- * Prepare payment vouchers for all cash disbursements, includes attaching all documentation and obtaining authorization to make payment from Al Probst, Duane Borgren, and Cindy Martens.
- * Responsible for reconciliation of money market and checking account for each of the two programs.
- * Maintain monthly expense reports for each program.
- * Accept and record installment loan payments from landlord clients on both the DOD program and the WHNCP Program.
- * Monitor accounts payable and address any problem account.
- * Update loan balances and prepare mortgage reports for use by the City of Platteville auditor.
- * Issue checks and obtain signatures for Lien Waivers and Completion Compliance.
- * Maintain an Encumbrance Report which tracks all cash receipts and cash disbursements, as well as amounts encumbered for ongoing projects for the DOD program.
- * Monitor a WHNCP Financial Report which tracks cash receipts and cash disbursements for that program.
- * Monitor Rountree Hall Apartments and Family Advocates per separate compliance requirements.
- * Write and maintain compliance of the Citizen Participation Plan for the City.
- * Continue to assist under the cooperative agreement with the Community Action Program to service and market the new diversified housing programs HOME and HCRI programs available to Platteville residents.
- * Exofficio Member of the Community Development Board.
- * Maintain Housing Referral Service.
- * Send confirmations to all landlord accounts at year end.
- * Responsible for maintenance of client files.
- * Maintain client confidentiality.
- * Order forms and tax materials.

- * Prepare and send 1098's to landlord clients, federal, and state agencies at year end.
- * Compile information packets and handbooks for all new members.
- * Reserve Council Chambers for meetings.
- * Mail meeting notices, minutes, client data, and preliminary cost estimates and inspection reports for new applicants to CD Board Members.
- * Notify radio station, Platteville Journal, and post all meeting notices as required.
- * Act as secretary for all Community Development meetings and type minutes.
- * Maintain official records for meetings.

HOUSING AUTHORITY PROGRAM – 42%

- * Executive Director administers the Housing Authority Programs.
(Refer to enclosed Analytical Analysis of Housing Authority Responsibilities)
- * On a continuing basis resolve applicant, participant, landlord, and/or relating Housing Authority problems or issues as they arise: - most often subject for complaint interpretation of Federal Regulations.
- * Maintain a training level to be in compliance with the ever-changing Federal regulations.
- * Write Equal Housing Opportunity Plan for Federal approval.
- * Continue to maintain excellent Federal Compliance Audits.

FAIR HOUSING AND EQUAL HOUSING OPPORTUNITY PROGRAM – 3%

- * Maintain Housing Discrimination Forms and Resources.
- * Receive Fair Housing related complaints from landlords, tenants and homeowners and resolve and or forward to correct agency.
- * Maintain extra points for Grants under Fair Housing and Equal Opportunity criteria.
- * Disseminate material and keep public informed of new or revised regulations.

GENERAL ADMINISTRATION OF DIVISION AND MISCELLANEOUS DUTIES – 5%

- * Supervision includes but is not limited to: allocating personnel, financial and budget decisions, reviewing work, assigning work, abiding by regulations, addressing personnel issues including Work Study.

- * Conduct research in response to citizen requests to provide information within the scope of our Division's responsibilities.
- * Issue Building Permits as needed.
- * Process City Resident's concerns and grievances professionally and expeditiously.
- * Answer phones for Steve, Jack, Ken and Carol when they are out of the office or tied up on other lines.
- * Assist walk-in clients when other staff is unavailable.
- * Make question referrals to Steve, Jack, Ken and Carol.
- * Provide answers to landlord and tenant questions for the general public.

Note: In most cases, the priority problem or project dictates the percentages. General Administration usually falls within the relevant Departmental Division.

10. Reese earns \$13.36 an hour for her current job responsibilities. Reese receives time and one-half for working over 40 hours a week and any such overtime is taken as compensatory time. Reese in 1998 received a bonus of \$1,500 based upon the work she does on the HUD projects.

11. At the time of the hearing, Reese headed an office with about five part-time limited-term employes ("LTE") and work-study student employes who earn between \$6.00 per hour and \$7.00 per hour. Reese gives routine work directives to those employes and she discusses any work problems relating to them with Director of Community Development and Planning Van Steenhuyse. Reese has participated in a group interview of applicants for hire. She also has interviewed job applicants entirely on her own, after which she informed Van Steenhuyse about who she had hired. She also has checked job references for all job applicants in her office entirely on her own. She effectively recommended to Van Steenhuyse that one employe be terminated in 1998. She has effectively recommended that certain employes in her office be given pay raises by promoting them from work-study status to LTE status and she aids Steenhuyse in establishing the wage rates for new hires. Employes wanting to take time off ask Reese permission to do so. Reese does not evaluate employes; she has never handled any grievances; and she does not attend any supervisory or managerial meetings where union-related matters are discussed.

12. Reese has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

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

CONCLUSION OF LAW

The Housing Director (Incumbent Reese) is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Housing Director 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 21st 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

CITY OF PLATTEVILLE

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

POSITIONS OF THE PARTIES

The Union claims it originally agreed in 1998 to Reese's exclusion from the bargaining unit because of the City's erroneous representation that Reese is a supervisory and/or managerial employe when, in fact, she is neither given the changes in her job duties. The Union thus asserts that Reese does not perform any managerial or supervisory duties and that she should be included in the bargaining unit.

The City maintains that Reeses' position is supervisory and/or managerial in nature and that she should be excluded from the bargaining unit because she maintains sufficient *indicia* of supervisory and/or managerial status.

DISCUSSION

The statutory definition of a supervisor in Sec. 111.70(1)(o)1, Stats., is the following:

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

The factors that we focus on in evaluating claims of supervisory status under Sec. 111.70(1)(o)1, Stats., are the following:

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 persons exercising greater, similar or lesser authority over the same employes;

4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skill or his/her supervision of employes;
5. Whether the supervisor is 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.

See, for example, CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97).

We have consistently held that not all of the above factors need to reflect supervisory status for us to find an employe to be a supervisor. Our task therefore is to determine whether the factors are present in sufficient combination and degree to warrant finding an employe to be a supervisor.

See, for example, ONEIDA COUNTY, DEC. NO. 24844-F (WERC, 1/99).

As set forth in Finding of Fact 11 above, the record establishes that Reese: (1) has participated with others in the hiring process by interviewing job applicants; (2) has interviewed job applicants on her own and has subsequently hired applicants entirely on her own after telling Director of Community Development and Planning Van Steenhuyse who she intended to hire; (3) has checked out job references for all job applicants in her office entirely on her own; (4) has effectively recommended that an employe be terminated; (5) has worked with Van Steenhuyse in establishing the starting wages for new hires; (6) has effectively recommended that certain employes be promoted from work-study status to LTE status, thereby raising their wages; and (7) independently directs and assigns work to the employes in her office.

In addition, while the Union correctly notes that Reese is the lowest-paid regular full-time employe in the Community Development and Planning Department, she is paid substantially more than the employes she supervises. We are further satisfied her wage rate is at least partially reflective of her supervision of employes.

Given the foregoing, and particularly in light of her authority to hire and discipline, we conclude that Reese is a supervisor who therefore must continue to be excluded from the bargaining unit described above in Finding of Fact 3. See CITY OF RACINE, DEC. NO. 24840-A

(WERC, 9/97) Head of Circulation, p. 29. Given this finding, it is unnecessary to determine whether Reese is a managerial employe.

Dated at the City of Madison, Wisconsin this 21st 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

gjc
29388-B.D