

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

**WISCONSIN COUNCIL 40,
AFSCME, AFL-CIO**

Involving Certain Employees of

STEVENS POINT AREA SCHOOL DISTRICT

Case 67
No. 56810
ME-3681

Decision No. 29484-B

Appearances:

Mr. Michael J. Wilson, Representative at Large, 8033 Excelsior Drive, Madison, Wisconsin, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

Ruder, Ware & Michler S.C., by Attorneys **Dean R. Dietrich** and **Kerry A. Jung**, 500 Third Street, Wausau, Wisconsin, appearing on behalf of the Stevens Point Area School District.

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

On January 7, 1999, Wisconsin Council 40, AFSCME, AFL-CIO, filed with the Wisconsin Employment Relations Commission a petition to clarify an existing bargaining unit of employees of the Stevens Point Area School District by the inclusion therein of six Food Service Managers. The District opposed the petition on the grounds the employees are supervisors and also filed a motion asking that the petition be dismissed because Wisconsin Council 40 had previously stipulated that the managers are supervisors.

No. 29484-B

Hearing in the matter was held in Stevens Point, Wisconsin on April 20, 1999 before Examiner Stuart D. Levitan, a member of the Commission's staff. Following failed efforts at conciliation, Examiner Levitan conducted a further hearing on November 8, 1999. The parties filed written arguments and replies, the last being received on January 11, 2000.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization with offices at 8033 Excelsior Drive, Madison, Wisconsin.
2. The Stevens Point Area School District, herein the District, is a municipal employer with offices at 1900 Polk Street, Stevens Point, Wisconsin.
3. On September 15, 1998, the Union filed with the Wisconsin Employment Relations Commission a petition for election by which it sought a representation vote in the following claimed appropriate bargaining unit:

All regular full-time and regular part-time employees of the Stevens Point Area School District Food Service Department, excluding currently represented employees in bargaining units and excluding supervisory, managerial, and confidential employees.

Accompanying the petition was a letter from Union Organizer Mary Burpee, stating in part as follows:

I would like to bring to your attention the fact that there are six employees with the job title "Food Service Manager" included under the description of the appropriate bargaining unit. It is our position that these six employees do not fall under the statutory exclusion of supervisory, managerial and confidential.

On October 6, 1998 District Human Resources Director David Anderson executed a proposed Stipulation for Election and Voting List. "That list, however" he wrote Burpee, "does not include the six employees with the job title "Food Service Manager" because we believe those positions do fall within the statutory exclusions of supervisory, managerial and confidential." Burpee executed that Stipulation, with the Voting List excluding the Food Service Manager position, on October 20, 1998, submitting it to the Commission two days later.

On November 12, 1998, the Commission directed a representation hearing be held pursuant to the Stipulation. At that election on December 9, 1998, a majority of eligible employees voting selected the Union for purposes of collective bargaining. The Commission issued the appropriate Certification of Representative on December 28, 1998.

On January 7, 1999, the Union filed the instant Petition.

4. As part of its operations, the District maintains a Food Service Department, headed by Director Gayle Wald, who reports to the Assistant Superintendent for Business, Robert Palmer. Wald has been Director (FSD) for over 12 years, with overall responsibility for the operation and administration of the District's \$1.7 million program preparing and delivering food. Over the past several years, the District has added five breakfast programs, with a corresponding increase in Wald's State reporting requirements, and centralized in Wald's office (Wald and her secretary) the administration of the subsidized meal program.

The District maintains six production kitchens, each staffed by a Food Service Manager who directs the work of the indicated number of food service employees at the following locations: Stevens Point Area High School (11), Kennedy (2), Washington (3) and McDill (4) Elementary Schools, and Jacobs (6) and Franklin (8) Junior High Schools, respectively. The High School kitchen also services satellite kitchens at four further elementary schools (Jefferson, Madison, Jackson and McKinley), where there are three food service employees at each. The Franklin Junior High School kitchen also services three other elementary schools (Roosevelt, Bannach and Plover/Whiting).

5. The Food Service Managers (FSM) are in charge of the overall operation in each production kitchen, with responsibilities for quantity and quality control of food produced, and the following representative position descriptions:

FOOD SERVICE MANAGER/STEVENS POINT AREA HIGH SCHOOL (SPASH)

ORGANIZATIONAL RELATIONSHIPS:

Reports and accounts to the Director of Food Service.

PRIMARY FUNCTION:

To provide school children with food that is of high quality, acceptability, and sound nutritional integrity in an atmosphere of cleanliness and professionalism.

Assist the Director of Food Services by providing leadership in developing exemplary programs in the food service area.

PERFORMANCE RESPONSIBILITIES:

1. Supervises and directs the overall operation of the food service department at Spash, to assure that high standards of quality, cleanliness, safety and professionalism are maintained at all times.
2. Supervises and directs the daily activities of all food service staff at SPASH. Establishes duties and work schedules for the staff.
3. Orders food in quantities appropriate for the amounts to be prepared and served. Determines the quantities of food to be prepared each day. Determines portion sizes to be served, in accordance to NSLP regulations.
4. Assures that correct sanitation (HSS 196) and safety procedures are followed by all staff.
5. Completes daily menu evaluations, according to DPI guidelines, for all schools that food is prepared for.
6. Supervises and trains new employees and substitute employees in all areas of sanitation and food production.
7. Calls substitutes as needed.
8. Develops and maintains cleaning schedules for staff and equipment care maintenance schedules. Develops procedures for proper usage of equipment.
9. Maintains all food, supplies, and equipment inventory records.
10. Keeps complete and accurate records of ala carte programs, including expenditures, revenues, pricing, etc.
11. Assists in conducting yearly evaluations for food service personnel at SPASH.

12. Assists in interviewing and selection of food service personnel at SPASH.
13. Communicates necessary information to satellite kitchens and head start program regarding lunch and breakfast programs. Maintains effective communications with staff and principal at satellite schools.
14. Assure that proper food handling and preparation procedures are being used by staff, and work simplification methods are incorporated whenever possible.
15. Checks in food orders to assure that proper quantities are being delivered and that no damaged or unusable items are accepted, and assures that all food is stored properly in secured areas.
16. Communicates regularly with Food Service Director regarding all pertinent information relating to the operation of the food service programs at SPASH or any of the satellite kitchens they send food to.
17. Reviews employee timesheets and verifies totals and overtime.
18. Assists in developing inservices and training programs for food service staff.
19. Prepares the monthly absence report for staff at SPASH.
20. Promotes good nutrition and participation in the lunch program to all students.
21. Directs and supervises cashiers on proper ticket and money handling procedures, in accordance with NSLP regulations.
22. Maintains and regulates high standards regarding the quality of the food being prepared at SPASH.
23. Standardizes recipes and maintains on file. Tests new food products
24. Assists in food preparation areas as needed.
25. Attends food service related classes and workshops as requested.

26. Maintain required records as they relate to food purchasing, production, preparation, participation, safety and sanitation.
27. Participates in nutrition related classroom activities, as requested.
28. Performs such other tasks and assumes such other responsibilities as assigned by the Food Service Director.

FOOD SERVICE MANAGER/ELEMENTARY PRODUCTION KITCHENS

ORGANIZATIONAL RELATIONSHIPS:

Reports and accounts to the Director of Food Services

PRIMARY FUNCTION:

To provide school children with food that is of high quality, acceptability, and sound nutritional integrity in an atmosphere of cleanliness and professionalism.

Assist the Director of Food Services by providing leadership in developing exemplary programs in the food service area.

PERFORMANCE RESPONSIBILITIES:

1. Supervises and directs the overall operation of the food service department at the respective elementary kitchen, to assure that optimum standards of quality, cleanliness, safety and professionalism are maintained at all times.
2. Supervises and directs the daily activities of all food service staff at site. Establishes duties and work schedules for the staff. Evaluates all tasks for appropriateness of time allowed to perform those tasks. Prepares and maintains on file documentation of all inappropriate employee behavior or work performance including dates, times, a brief description of the inappropriate action and any disciplinary action taken pertaining to the incident
3. Supervises and trains new employees and substitute employees in the kitchen in all areas of sanitation, safety and food production. Assists in developing inservice and training programs for food service staff.

4. Assures that sanitation (HSS 196) and safety procedures are followed by all staff.
5. Develops and maintains cleaning schedules and equipment care maintenance schedules for staff. Develops procedures for proper usage of equipment.
6. Completes an annual performance evaluation for each food service employee at the site and reviews the evaluation with the employee.
7. Assists in interviewing and selection of food service personnel at the site and food service substitutes.
8. Reviews employee timesheets for accuracy and verifies all totals and extra time. Prepares the monthly absence report for staff at site.
9. Directs and supervises cashiers on proper ticket and money handling procedures in accordance with NLSP regulations.
10. Orders food in quantities appropriate for the amounts to be prepared and served. Determines the quantities of food to be prepared each day. Determines portion sizes to be served in accordance to NSLP regulations.
11. Checks in food orders to assure that proper quantities are being delivered and that no damaged or unusable items are accepted, and assures that all food is stored in secured areas.
12. Completes daily menu evaluations for lunch and breakfast, according to DPI guidelines, for all schools that food is prepared for.
13. Maintains all food, supplies, and equipment inventory records.
14. Calls food service substitutes as needed.
15. Communicates pertinent information relating to the operation of the food service programs at the site to the Food Service Director.

16. Assures that proper food handling and preparation procedures are being used by all staff; and that work simplification methods are incorporated whenever possible.
17. Standardizes all recipes for use in food service and maintains on file. Tests new food products for acceptability by students.
18. Performs all cooks responsibilities, including preparation of all breakfast and lunch menu items, ala carte and catering as needed, including soups, entrees, salads, sandwiches, fruits, vegetables, bread and bakery items and desserts. Assists in cleanup.
19. Maintains required records as they relate to food purchasing, production, preparation, safety and sanitation.
20. Makes equipment replacement recommendations for the site as needed.
21. Promotes good nutrition and participation in the lunch program to all students.
22. Participates in nutrition related classroom activities as requested.
23. Coordinates and assists in the planning and preparation of catering, special events and other activities that require the use of the site kitchen for outside activities.
24. Makes recommendations for contract negotiations regarding language issues.
25. Performs such other tasks and assumes such other responsibilities as assigned by the Food Service Director.

SKILLS, KNOWLEDGE, AND ABILITIES:

Requirements include: (1) Training and/or work experience in quantity food production. (2) ASFSA certified with DPI classes in menu planning, menu evaluation and child nutrition. (3) Possesses effective communication skills, work skills, and public communication skills. (4) Possesses a thorough knowledge of the National School Lunch and Breakfast Program requirements and regulations, including recordkeeping and accountability for the program.

(5) Knowledge of safety and sanitation requirements, food purchasing, receiving, storage and inventories and equipment operation. (6) Good recordkeeping, math, and decision making skills. (7) Supervisory experience and/or training. (8) Possesses such alternatives to the above qualifications as the School District may find appropriate and acceptable.

Food Service Director Wald visits each production site once or twice monthly, meets regularly each month with the managers as a group, and has daily telephone contact with each FSM.

Regarding indicia of supervisory status, each FSM has essentially equivalent authority and responsibility.

6. Prior to and during the pendency of this proceeding there was an Agreement (July 1997- June 1999) between the District and the food service employees, the result of the District and the employees meeting and conferring over wages, hours and conditions of employment. That Agreement provides the following wage structure:

	97-98	98-99
<i>Food Service Manager</i>	9.67	10.01
<i>Cook</i>	8.82	9.13
<i>Head Server</i>	8.49	8.78
<i>Cashier</i>	8.49	8.78
<i>Server</i>	8.32	8.61
<i>Dishwasher</i>	8.32	8.61
<i>Substitute</i>	5.55	6.25

Food Service Managers also earn additional compensation based on the average number of meals prepared, (up to an additional 50 cents) and all positions can receive a 10 cent bonus for meeting minimum certification levels.

The Agreement provides identical fringe benefits and other conditions of employment to all affected employees. The Agreement requires employees to give general notice of absences to the respective FSM or the Director, to notify the Director specifically for emergency leave, and to present a return-to-work clearance after maternity leave to the Director. The Agreement provides for paid designated holidays and two personal leave days, plus several medical, family, emergency and funeral leaves; there is no vacation leave. The Agreement authorizes the Director of Human Resources to find unusual circumstances to justify amending the rules on personal leave days. The Agreement contains a grievance procedure that identifies the Food Service Director as First Step. A prior agreement, amended during the pendency of the organizing drive, used the phrase, "his/her immediate supervisor...".

FSM approve employee leave requests if they have sufficient remaining employees to cover the work.

Each FSM directs and assigns the work force, including setting schedules, rotating assignments, and handling special event activities. Wald generally allows each FSM to authorize overtime, but that if a pattern of overtime use develops she will discuss the matter with the Food Service Manager.

7. The Food Service Managers have participated in the evaluation of the employees at their work site since at least 1996. They use a standard performance evaluation matrix, with such headings as Dependability, Attitude Toward Job, Leadership, Personal Appearance, Organizing Ability, Knowledge of Equipment Usage, and Food Preparation and Service. There are boxes for the evaluator to check indicating whether the employee's performance is Unacceptable, Needs Improvement, is Satisfactory, or Not Applicable. There is room for additional comments. Evaluations do not affect pay or benefits, but may lead to discipline in certain situations where identified shortcomings remain uncorrected.

The FSMs fill out the evaluation forms and return them to Food Service Director Wald for retyping. Wald may insert additional comments, but does not change the checked performance ratings. Wald and the FSM sign the evaluation form. Wald, the relevant FSM and the employee meet jointly to discuss the evaluation.

On May 6, 1997, Food Service Manager Gribble, Wald and an employee discussed an evaluation which Gribble prepared. That evaluation listed the cook as "needs improvement" in the area of sanitation and safety, with the added comment "Needs to stay alert and aware of chemicals and solvents."

The May 20, 1996 evaluation of a SPASH cook, which FSM Sharon Omernick and Wald co-signed, found the employee to be needing improvement in the areas of "attitude toward job" and "organizing ability," especially the "need to improve accuracy in calculating portions in schools." The evaluation added, "the new regulations that we must follow next year will be tough for you. Use the summer to study them."

The April 16, 1999 evaluation which Wald and Karen Adams, the FSM at P.J. Jacobs Jr. High issued found a cook needing improvement in three areas, including attitude, leadership and organizing ability. The evaluation noted the employee "needs detailed direction in order to complete tasks. Does not remember details of her job from day to day. (X) is a very nice person, but needs continual reminders from co-workers in order to perform her assigned tasks."

Evaluations have also been enthusiastically positive, such as the glowing review, which FSM Omernick co-signed, of a SPASH dishwasher in April 1999.

8. A Food Service Manager's normal work day consists of both food preparation duties (baking, cooking, serving, cleaning) and administrative/supervisory tasks (ordering food and supplies, directing the work of employees, maintaining production standards). The amount of time spent on food preparation as opposed to administrative/supervisory duties varies according to the preferences of each FSM.

Food Service Managers may be involved in management decisions affecting the Food Service Department. For instance, when a dishwasher retired, FSM Omernick and Wald worked out a way to distribute those hours of work to another employee and two cashiers. FSM Omernick also played a significant role in the initiation and evaluation of changes to the a la carte food windows, the attrition of one dishwasher position and the redistribution of the position's hours.

9. When hiring, Wald first issues a job posting that goes to all regular food service employees and substitutes, with qualified current regular employees having first rights to a vacancy. If the vacancy is not filled by transfer of a regular employee, Wald and the FSM from the applicable site conduct a hiring interview and discuss the various candidates. Wald hires the person the FSM recommends, even when she, Wald, prefers a different applicant.

10. Regarding discipline, Food Service Managers have the authority to discuss performance issues with food service employees and make corrective suggestions.

The District's documented experience with discipline of food service employees over the five or so years preceding the hearing was as follows:

- On April 10, 1996 Lois Gribble, the FSM at Ben Franklin Junior High, wrote to Wald as follows:

On April 8, 1996 an incident occurred at Ben Franklin Food Service Dept. that I need to report and document as instructed.

At about 8:30 AM (redacted) began a routine task involving the preparation of hot beef sandwiches. This requires spraying a pan with vegetable oil and layering the beef on the pan prior to heating it. Grace Wroblewski, another cook, came to me and said that I needed to go to the prep area and see what (redacted) was doing. I saw that she had sprayed the bakingpan with oven cleaner instead of cooking oil and began to fill it with meat. When I brought it

to her attention she became agitated and asked if she should rinse the oven cleaner off of the meat. I reminder her that oven cleaner is corrosive and that the contents of the pan would have to be disposed of.

(Redacted) stated that there was a lot of work that day and she became confused because of the fast pace. We spoke of the importance of taking enough time to do the job safely regardless of timeliness.

I recommend that this incident be discussed at (X's) evaluation interview with the Director and myself, and that some thought be given to finding less critical and less stressful work for this employe.

- On or about February 2, 1999, Karen Adams, the FSM at P.J.Jacobs Junior High, wrote Wald as follows:

On 2-2-99, (redacted) was involved in an incident with a student. The student stated that he had received a bloody nose when () shut the dishroom window. (X) and I went to the principal's office and talked to the student with the principal present. (X) stated that the student was annoying her by returning to the dish window numerous times and making rude comments. So the next time he came to the window, she closed it. The student stated his nose was bumped at this time. (X) apologized to the student. She also called his mother and explained what had taken place. (X) apologized for the incident and said that nothing like this would happen in the future. We consider this a closed matter.

Wald received this memo for information purposes, and that no further action was taken.

On November 13, 1995, Pam Bork, principal at Jefferson School, wrote a cook with copy to Wald, as follows:

On 11-09-95, one and one-half of our classes were not fed lunch because of an inaccurate lunch count. I became aware of the shortage at 12:20 p.m. and I went down to the gym to see what was done to accommodate the shortage. Much to my surprise I was informed by @ that the students were not offered any food and no attempt was made to serve them any food. I was told by @ that she suspected that the count was wrong and low but her responsibility was to serve 260 meals. I asked if she had additional food. @ said, "yes, but it was not prepared". After parent complaints I feel it necessary to document that in my opinion, @ did nothing to demonstrate to the parents or myself the true

purpose of her position, to feed the students. She truly did not see this as her responsibility. I want it clarified by this memo that it is her responsibility to feed all students whether the lunch count is accurate or not. It would have been perceived by parents if some attempt had not been made, that we saw it as our responsibility to feed the students. Our parent newsletter stated that lunches were to be served. Since it was our collective mistake, I want every attempt made in the future to serve our students. If we must supervise them, we will. If students turn us down, we can say we tried.

In closing, I would like the following procedure to be followed for a future occurrence.

- 1) Principal notified by food service staff.
- 2) Prepare additional food if there is a possibility of a shortage.
- 3) Make every attempt to feed all students.

Failure to do this in my opinion is to be insubordinate and outside your duties and responsibilities.

The kitchen at Jefferson School is a satellite kitchen, under the general supervision of the FSM at SPASH, Sharon Omernick.

On April 17, 1996, Wald and Pam Bork, the Principal at Jefferson, and Assistant Superintendent for Personnel Warren Andrews reviewed with an employe her evaluation, which included three "needs improvement," two "unacceptable" areas, and the final comment that "(X) lacks the interpersonal skills to function effectively as Head Server. This has been documented and discussed with her for 4 years." The evaluation also stated the employe was "apathetic towards her work responsibilities (and) exaggerates issues to other employes," that she "does not keep accurate lunch count records," that she "complains about incidental issues," and that she used improper batch cooking methods. At that time, Andrews did not have any particular personnel involvement in the Food Service Department, other than his general District-wide authority that activated during considerations of transfer, suspension and discharge. Neither SPASH FSM Omernick nor anyone else other than Wald, Bork, Andrews and the employe were present at the meeting or privy to the correspondence. On April 19, Andrews wrote to that employe, with copies to Wald and Bork, summarizing that meeting as follows:

I have reviewed your employee performance evaluations since 1992. There has been a continuous pattern of behavior that was ranked unsatisfactory or needs improvement during this period of time. Those criteria included, "Attitude Toward Staff and Students", and "Attitude Toward Job". I specifically pointed out the comments made by Mrs. Wald, Mrs. Bork, and Mr. Schroeder (former Jefferson Elementary School Principal), over the last five years that addressed the concerns in the two areas. This was made very clear.

Change must occur. I pointed out to you that change must occur and there must be improvement in the areas specified or the District will have no choice but to do one of the following:

1. Transfer you to another position that might include not having contact with students or adults
2. Suspension from your position
3. Discharge

I indicated that I would be providing you with a summary of our conference and what was discussed. This memo represents that summary. I also informed everyone at the conference that Mrs. Bork and Mrs. Wald would develop a plan of assistance that would include expectations for improvement.

A meeting will be held with you before June 1, 1996, and also prior to the start of school before students return. Mrs. Wald and Mrs. Bork will review the plan of assistance and job targets at that time. They will initiate periodic meetings with you that could include once a week conferences.

If you have need of assistance or do not understand a directive, please be sure that you get your concerns clarified and the support needed for you to do your job effectively from either Mrs. Bork or Mrs. Wald.

sl

cc- Gayle Wald – Director of Food Service
Pam Bork – Principal Jefferson Elementary School
Personnel File

On May 22, Wald issued a Plan of Assistance/Job Expectations memo to the employee, with copies to Andrews and Bork, as follows:

At our meeting on April 17, 1996, we (Warren Andrews, Pam Bork, and Gayle Wald) discussed with you that we would be developing a list of job expectations for you to help you make the required changes in your job performance. The following is a list of those job expectations:

FOOD QUALITY/PREPARATION:

1. Use batch cooking whenever possible – cook smaller amounts at intervals, as needed, instead of cooking all the food at one time. This works well with vegetables, most oven ready products, and some entrees. It will ensure optimal quality and freshness.
2. Adult portions should be the same as the high school portion – refer to your position control chart for portion sizes, or ask Sharon at Spash.
3. You need to keep and use daily records that includes information on the number of students that ate each day, what was on the menu, choice days, day of the week, number of adults that ate, information on absences and field trips, number of meals ordered, number of meals sent, number of meals actually served, portion sizes served, etc.
4. Replenish condiments more often and set small amounts at a time. Some items may need to be pre-portioned so you don't run out.
5. Develop consistency with portion sizes and food quality.
6. Check food quantities as soon as food is delivered to make sure that you have enough. This way you can order more food or make other arrangements in advance.
7. Communicate with food service staff at SPASH when there are problems concerning quantities, portion sizes, etc. You will need to alert SPASH to any special circumstances, ie high Hmong population-you may need to order more rice when it is on the menu.

ATTITUDE – TOWARDS JOB

1. Show more concern about food quality and appearance (presentation) You are an important public relations person for the food service department at Jefferson School.

2. Be more conscientious about all aspects of your job, ie recordkeeping, replenishing condiments, etc.
3. Seconds – wait until all students are served (12:45) before giving out seconds.
4. Will need to immediately tell principal when you run out of food for any reason.

ATTITUDE – TOWARD STAFF

1. Promote a friendly and positive atmosphere.
2. Do not exaggerate concerns or problems after an outside group uses the kitchen.
3. Inform the Principal of problems when they would disrupt or jeopardize the food service program.
4. Share freezer space, when possible, with small staff requests.
5. Do not show favoritism towards Educational Assistants over teaching staff.

ATTITUDE – TOWARDS STUDENTS

1. Scares students with abrupt voice and creates a threatening environment for students.
2. See attached – Commandments of a School Food Service Professional.

The undersigned employee acknowledges receipt of this plan of assistance.

On September 27, 1999, Wald and Marge Hoffman, the FSM at Washington elementary school, wrote to a food service employe as follows:

SUBJECT: 30-day probationary period/new job assignment

Cc: David Anderson, Director of Human Resources
Lois Gribble, Food Service Manager – Ben Franklin
Personnel file

After serving 18 days of your 30-day probationary period, from August 24, to September 17, 1999, we are recommending a transfer back to your cook position at Ben Franklin effective September 28, 1999. Your job performance at Washington School has not met an acceptable level of performance.

We have sited (sic) the following reasons for the transfer back:

1. You have not adapted well to the independent work environment at Washington Elementary School.
2. You have had trouble remembering your daily work assignments. Even when the Food Service Manager wrote out all of your schedules, you still needed constant help and reminders of your assigned tasks.
3. There was very little pre-planning on your part to take required foods out of the freezer so it would be ready to prep on the day it was needed, even though this was written down for you.
4. It took you too long to complete assigned tasks; as a result, lunch was served later than the scheduled time on several occasions. You were not able to meet most work deadlines; therefore causing other employees to complete some of the tasks that were your responsibilities.
5. @ needs more on the job supervision than can be provided at Washington School.

@ has admitted that the job at Washington School too much for her to handle and she would like to leave. @ needs to be in a work environment that can provide more supervision.

11. The Food Service Managers have supervisory duties and responsibilities in sufficient combination and degree to be supervisors.

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

CONCLUSION OF LAW

The Food Service Managers are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore are not municipal employees 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 Food Service Managers shall continue to be excluded from the bargaining unit referenced in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of April, 2000.

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

STEVENS POINT SCHOOL DISTRICT (FOOD SERVICE)

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

POSITIONS OF THE PARTIES

The Union's Initial Brief

In support of its position that the subject positions are municipal employees, the Union asserts the Food Service Managers do not have supervisory authority because all significant personnel actions are either initiated or approved by Food Service Director Wald, Assistant Superintendent for Business Palmer and/or Human Resources Director Anderson.

In particular, Wald interviews all applicants and makes her own evaluation and determination of employee qualifications. Wald, Anderson and Palmer determine whether or not to discharge an employee. Notwithstanding that a Manager may send an employee home at the start of the day, it is Wald, Anderson and Palmer who make decisions as to whether or not to impose disciplinary suspension. The Food Service Managers do not make decisions regarding transfers or have authority to layoff or recall employees. They have only limited authority to make work assignments within a system where schedules have not changed in years and assignments are rotated among cooks at each site. The Managers have had no role in adjusting grievances. The Managers' sole role in discipline is making incident reports to Wald, who then investigates and determines appropriate discipline, if any, in coordination with Anderson and Palmer.

The District has never advised Wald of any change in her supervisory authority, which she continues to exercise as the daily supervisor over all food service workers regarding all significant personnel decisions. The Food Service Managers supervise an activity as opposed to supervising employees. Incident reports made to a higher authority cannot be construed as the authority to discipline or effectively recommend same; the fact that the District wanted the Managers to document employee performance because of just cause concerns does not equate to the Managers making real disciplinary decisions. Further, sitting in on job interviews and evaluations are not significant indicia of supervisory authority where higher level officials conduct their own interviews.

Because it is Wald, in conjunction with Anderson and Palmer, who attend to all major supervisory functions of food service personnel, the Food Service Managers are not supervisory employees and should be accreted to the Food Service bargaining unit.

The District's Initial Brief

In support of its position, the District contends the Union is equitably estopped from proceeding with its unit clarification petition because the District relied on the Union's agreement as part of its earlier election petition that the subject employees are supervisors. Under common law, a showing of three elements -- action or inaction inducing another's reliance to the other's detriment -- is needed for establishing equitable estoppel. All three of those elements are present here, in that the Union freely stipulated that the managers were supervisors; the District revised the relevant position descriptions to incorporate supervisory duties and set proportionately higher wage rates. Holding the Managers to be municipal employees would thereafter cause budgetary difficulties and disrupt the Department's operations.

Notwithstanding the equitable estoppel, the Food Service Managers are supervisors because they exercise supervisory responsibilities in a sufficient combination and degree to meet the statutory definition.

In particular, the subject employees clearly have the effective authority to recommend hiring and have overall responsibility for disciplining employees at their worksite; they oversee the daily operations in their building, including calling substitutes, assigning responsibilities and authorizing overtime; they have direct oversight over the employees at their worksite, with the Food Service Director being the only other employee with supervisory authority over such employees; they are paid between \$.65 and \$1.30 per hour more than the highest paid cook, strongly identifying their supervisory duties and responsibilities; they oversee the work that is performed; they spend only a small portion of their time performing production work and the vast majority performing supervisory duties; and their ongoing responsibilities include making decisions regarding the performance of employees and the assignment of work.

From this record, the Commission can only conclude that the Food Service Managers are supervisors who should be continue to excluded from the bargaining unit.

Numerous past Commission cases support this conclusion, especially SCHOOL DISTRICT OF WAUSAUKEE, DEC. NO. 15620-A (WERC, 6/83) and SCHOOL DISTRICT OF LOYAL, DEC. NO. 18149 (WERC, 10/80).

The Union's Reply Brief

In reply to the District, the Union asserts the District made an inappropriate inquiry into an employee's union preference, Because the right to refrain from indicating an attitude towards representation is a basic right of municipal employees, the District's inquiry into employee union preferences was inappropriate.

Also, the District is crying wolf in sounding a false alarm about the impact of the Union's petition. There is no explanation of the purported budgetary difficulties or disruption to operations that would come by recognizing these employees as municipal employees. Anyway, disruption of operations is relevant only to the question of confidential status, which is not at issue here.

The cases which the District cites do not support the District's position in this case, in that the duties of the positions found to be supervisory were more closely in line with the duties of Wald rather than the duties of the Food Service Managers.

The District's Reply Brief

Because the record evidence does not support a finding that the subject positions are supervisory, the Food Service Managers should be accreted to the existing bargaining unit.

In reply to the Union, the District further asserts that the Union's characterization of the authority of the Food Service Managers is not accurate and ignores their effective authority to recommend or influence personnel decisions involving food service employees. The record testimony clearly shows the subject personnel overseeing the general operations of the food services area; participating actively in employee evaluations; making scheduling decisions, including the approval and denial of leaves; effectively participating in hiring and discipline (including removal from duty). The Union errs in asserting that the other three administrators exert meaningful control; Palmer does not participate in the daily operations, Anderson only becomes involved in termination decisions (as he does throughout the District workforce) and Wald has limited involvement with any particular food service site. The Food Service Manager is the supervisor of daily operations with effective authority and responsibility to commit the employer to both the use of resources and the administration of personnel actions. As such, they must be found to be supervisors and exempt from Union representation.

Moreover, the duties and responsibilities of the Manager position have expanded as a result of the Union representation of other food service employees. As noted by the amended position descriptions, the District has been forced to modify the position's duties to reflect expanded supervisory duties attendant to administering a labor agreement in a unionized setting. Ranking administrators specifically met with the Managers to discuss these new responsibilities, which duties will continue and expand.

As a result, the Commission must find that the Food Service Manager position should be excluded from the bargaining unit based upon supervisory status.

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, layoff, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

When evaluating claims of supervisory status under Sec. 111.70(1)(o)1, Stats., we consider 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 workforce;
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. WATERTOWN SCHOOL DISTRICT (FOOD SERVICE), DEC. NO. 29694 (WERC, 8/99)

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 is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an employe to be a supervisor. ONEIDA COUNTY, DEC. NO. 24844-F (WERC, 1/99).

We have spoken quite recently on the supervisory status of food service employes. In WATERTOWN SCHOOL DISTRICT (FOOD SERVICE), DEC. NO. 29694 (WERC, 8/99), we considered three such positions, as follows:

Production Manager

We find that the record contains sufficient evidence to establish that the Production Manager is a supervisor.

The Production Manager has effectively recommended the hire of both substitute employes and regular employes. The Manager independently evaluates employes on a regular basis. The Manager has the authority to approve time off and overtime. The Production Manager has regularly verbally reprimanded employes. Although verbal reprimands are not memorialized in the employes' personnel files, they are referred to when employes are subsequently evaluated.

It is also noteworthy that when Supervisor of Nutrition Services Martinez is absent, the Production Manager assumes overall responsibility for the Food Service Department. Further, given Martinez' many responsibilities and our conclusion that the Cook Manager-High School is not a supervisor, the Production Manager will often be the only individual available to actively supervise the 21 High School food service employes. While the employes in question are experienced and thus need little direction, the record satisfies us that the Production Manager has independent authority to direct the workforce where needed.

In addition, we are persuaded that the Production Manager's level of compensation is at least partially reflective of supervisory authority.

Although the Production Manager does spend a significant portion of the day performing food production work, we are satisfied that her role in the hiring, evaluation, discipline and direction of the workforce are clearly sufficient to establish supervisory status. Thus, the Production Manager is excluded from the proposed bargaining unit as a supervisor.

Cook Managers

In our view, there is a significant difference between the supervisory authority wielded by the Middle School Cook Manager and the High School Cook Manager.

Loomis, the incumbent Middle School Cook Manager, has evaluated the nine employees with whom she works. Loomis is the only supervisor at the Middle School who is available to and does in fact direct the employees' work. She meets weekly with Martinez and the Production Manager to discuss operational and supervisory issues. She effectively recommended the hire of two substitutes as regular employees. She has verbally reprimanded or counseled employees that she supervises. She independently authorizes overtime and time off for her employees. Lastly, Loomis schedules and holds staff meetings on her own with her employees.

We acknowledge that Loomis spends a substantial amount of her time cooking and serving food and is not paid at a level which reflects supervisory status. However, on balance, we are satisfied that she has sufficient indicia of supervisory status to warrant exclusion from the proposed unit. We find that Loomis is a supervisor.

In contrast, we are satisfied the Cook Manager at the High School is not a supervisor. The Cook Manager at the High School never evaluated any employees; spends the vast majority of her time preparing and handling food; did not have any involvement in hiring regular or substitute employees, calling in substitutes or authorizing overtime; was not invited and did not attend weekly supervisory meetings with Martinez, Backhaus and Loomis; never called staff meetings at the High School; and has never disciplined an employee.

Given the foregoing, it is apparent that the High School Cook Manager is not a supervisor and that the Production Manager is the supervisor of the High School food service employees. Thus, the High School Cook Manager is included in the potential bargaining unit.

We have also found a jail's Chief Cook to be a supervisory employee because he "has been responsible for written evaluations of the five other kitchen employees, has issued verbal and written reprimands, is now paid more than the other kitchen employees, and will be actively involved in the hiring process when new kitchen employees are hired." KENOSHA COUNTY (SHERIFF'S DEPARTMENT), DEC. NO. 21909 (WERC, 8/84)

In WAUSAUKEE UNITED SCHOOL DISTRICT NO. 1, DEC. NO. 15620-A (WERC, 6/83), we held to be a supervisor a Head Cook who "played a significant role in the hiring of two food service employees," including offering the job "to the one she deemed most qualified before reporting her actions to the District Administrator." She also was the sole employee in charge of the daily operations; evaluated the five other employees, "said evaluations, without

changes, placed in the employees' personnel files after having been presented to the school board by the administrator;" authorized overtime, excused absences and calls in substitutes without prior approval. She also played a significant role in planning for a reorganization, and in addressing subsequent complaints. She effectively recommended a reduction in hours for one employe.

In SCHOOL DISTRICT OF LOYAL, DEC. NO. 18149 (WERC, 10/80), we found to be supervisory the Head Cook who had production and preparation duties similar to the Food Service Managers, who could provide routine and repetitive changes to the work schedules, who had never imposed any discipline, but whose hiring recommendations "have always been followed by the District."

Regarding effectively recommending hiring, the record strongly supports a finding of supervisory status. Wald testified that she considered the Food Service Managers' hiring recommendations so important she would even accept their candidate rather than her own. FSM Gribble corroborated this testimony with personal recollections of her candidate being hired rather than Wald's.

The record on discipline is mixed. As a general matter, the FSMs' disciplinary authority is limited to oral reprimands. However, there is strong evidence of supervisory status in the harshly critical September 27, 1999 memo from Wald and Hoffman reversing a transfer on performance grounds. This memo, copied to Gribble and Anderson, involves two Food Service Managers as management agents in a significant personnel matter.

The FSMs' authority to direct and assign the workforce includes the ability to oversee schedules and assignments, approve or deny some leaves but not others, and to authorize overtime. Most of the operation – scheduling, preparing, serving, cleaning – is standard and routine, such that the FSM's role is as much administrative as discretionary. However, on balance, the FSM's authority to direct and assign the workforce reflects sufficient exercise of independent judgment to be an indicia of supervisory authority.

The FSMs play a significant role in the evaluation process. They independently determine the ranking employees receive and are present when the employe receives the evaluation.

Regarding the number of employees supervised, the number of employees supervised here ranges from 2 to 11, with only the Food Service Director having more departmental authority. We note that the Food Service Managers are the only on-site supervisors.

The Food Service Managers are paid \$.88 per hour more than the next highest paid food service employe. The pay differential reflects both personnel supervision and administrative responsibilities.

The amount of time the Food Service Managers spend performing the same duties as the employes whose work they supervise varies with the degree Managers enjoy or have time to devote to cooking and cleaning.

On balance, the record persuades us the Managers are supervising employes, rather than an activity.

Considering all of the foregoing, we conclude that the Managers are supervisors given their substantial hiring authority, role in evaluations, independent judgment exercised in direction of the workforce and level of pay. Our determination of supervisory status is consistent with our decision in WATERTOWN, SUPRA, regarding the Middle School Cook Manager, and in LOYAL, SUPRA, regarding the Head Cook.

We note that the Food Service Department's organizational structure reflects the varying size of the school populations served and the resultant need for varying numbers of food service employes. As a consequence of the organizational structure, the number of employes supervised by a Food Service Manager ranges from 2 to 11. While several of the Managers supervise a small number of employes, the record establishes that all Managers have the same supervisory authority and that, in all instances, the Managers are the only on-site supervisors. Under these circumstances, the small number of employes is not a significant factor in our decision.

Prior to hearing, the District moved to dismiss the petition on the grounds of equitable estoppel. Given the result reached on the merits, it is unnecessary for us to determine this issue.

Dated at Madison, Wisconsin this 7th day of April, 2000.

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

