

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**SCHOOL DISTRICT OF RIB LAKE**  
Involving Certain Employes of  
**SCHOOL DISTRICT OF RIB LAKE**

Case 18  
No. 57420  
ME-3713

**Decision No. 29625-B**

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Appearances:

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Stevens L. Riley**, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the School District of Rib Lake.

**Mr. Gene Degner**, Executive Director, Northern Tier UniServ-Central, 1901 West River Street, P.O. Box 1400, Rhinelander, Wisconsin 54501, appearing on behalf of Northern Educational Support Team.

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

School District of Rib Lake filed a petition to clarify bargaining unit on September 28, 1999 with the Wisconsin Employment Relations Commission seeking to exclude the Head Cook and Head of Maintenance/Custodial Services from an existing bargaining unit represented by Northern Educational Support Team, WEAC, NEA because these employees are supervisors and/or managerial employees. The Northern Educational Support Team opposed the petition.

Hearing was held in Rib Lake, Wisconsin on December 2, 1999 by Examiner Lionel L. Crowley. The parties filed post-hearing briefs and reply briefs, the last of which were received on March 1, 2000.

No. 29625-B

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

### **FINDINGS OF FACT**

1. School District of Rib Lake, hereinafter referred to as the District, is a municipal employer and has its offices at 1200 North Street, Rib Lake, Wisconsin 54470.

2. Northern Educational Support Team, WEAC, NEA, hereinafter referred to as the Union, is a labor organization and has its offices at 1901 West River Street, Rhinelander, Wisconsin 54501.

3. As reflected in RIB LAKE SCHOOL DISTRICT, DEC. NO. 29625-A (WERC, 6/99) the Union is the certified exclusive collective bargaining representative of the following District employees:

All regular full-time and regular part-time nonprofessional employees of the Rib Lake School District excluding professional, supervisory, managerial, confidential, temporary, casual and seasonal employees.

4. The District's Food Service Department consists of the Head Cook, two Assistant Cooks at the High School and three Servers, one at Silver Creek Elementary, one at Clear View Elementary and one at the Middle School. Ilene Becker has been employed as the Head Cook by the District since 1989. The job description for the Head Cook (Food Service Supervisor) provides as follows:

**JOB GOAL:** To provide overall coordination of district school lunch program

**REPORTS TO:** Superintendent of Schools

**PERFORMANCE RESPONSIBILITIES:**

- Supervise performance of cooks and servers
- Screen applicants and make recommendations concerning employment of other food service personnel
- Plan weekly menus
- Coordinate all ordering
- Coordinate selection of commodities
- Coordinate distribution of food to participating schools
- Maintain district inventory of food stuffs, equipment and supplies

- Provide all financial data requested by bookkeeper so that necessary reports and claims may be made to the state
- Insure that an accurate accounting of meals served is maintained in accordance with applicable USDA regulations
- Follow rules and regulations established by USDA and DPI concerning the school lunch program
- Encourage staff attendance at conference and workshops
- Cooperate with food service officials by responding to requirements in a timely manner and by assisting the on-site review team in their evaluation visits.

**QUALIFICATIONS:**

- High School diploma or equivalent
- Experience in large group meal preparation is desirable

**SKILLS:**

- All skills required for a cook and server
- Organizational ability
- Knowledge of federal and state laws as they pertain to the school lunch program
- Ability to plan nutritious meals at relatively low cost
- Ability to supervise other persons

Becker reports directly to the Superintendent.

Becker's hours are Monday through Friday from 6:00 a.m. until 1:30 p.m. She plans all the menus, does all the ordering of food supplies, selects the vendors, does the bulk of the cooking and directs the work of the other food service employees. Becker participates with a school principal in the interviews for all new hires of regular and substitute food service employees and her recommendations have always been followed. Becker has not evaluated employees as the District does not have a formal evaluation system in effect. Becker has verbally reprimanded an employee and has the authority to effectively recommend more serious discipline.

Becker does not prepare the budget for the Food Service Department and is not familiar with the actual budget, which is about \$100,000 per year, but knows what a student is charged for lunch and by breaking down costs keeps these costs in line with the charges.

The Head Cook wage rate is \$.75/hr. more than the wage rate of an Assistant Cook. However, because the existing salary schedule provides for longevity pay, Becker is paid less than an Assistant Cook who has longer service with the District.

5. Michael L. Coleman has been employed as the Head of Maintenance by the District since January, 1998. The job description for the Head of Maintenance (Head of Maintenance/Custodial Services) provides as follows:

**JOB GOALS:** To facilitate the uninterrupted and comfortable operation of the school plant. To ensure that high standards of cleanliness, sanitation, safety and security are met. To serve as the on-site manager for maintenance of district buildings and grounds. To exercise supervision of maintenance/custodial employees in the performance of their duties.

**REPORTS TO:** Superintendent of Schools and Building Principals

**SUPERVISES:** District Maintenance/Custodial Staff

**PERFORMANCE RESPONSIBILITIES:**

**Employment, Induction, Assignment of Staff**

- Assume an active role in recruiting new maintenance/custodial personnel
- Provide for necessary initial and refresher on-the-job training
- Recommend building transfers and changes in assignment
- Arranges for employment opportunities through the Job Training Partnership Act as needed

**Supervision**

- Develops schedules and approves time sheets for custodial and maintenance personnel
- Ensures that cleaning/maintenance standards meet established requirements
- Evaluates performance of custodial/maintenance personnel

**Inspection**

- Inspects buildings and grounds daily to ensure they are free of hazards
- Executes security and fire hazard checks

**Maintenance**

- Carries out preventive maintenance in accordance with prescribed schedules
- Handles minor repairs within his resources
- Arranges for and evaluates contracted services

Budget/Inventory Control

- Prepare annual budget request for buildings and grounds maintenance and operations
- Prepare supply and equipment orders (using purchase order system) and maintain a system of stock control of all supplies

Operations

- Operates the heating and ventilating systems, and maintains the plumbing and lighting systems, lawn, parking, athletic and playground areas
- Arranges for physical requirements for school rental, dances, and other activities
- Maintains preventive maintenance logs and other records as required
- Performs related duties as required for the daily operation of the school

Environment, Coordination, Cooperation

- Schedules all maintenance activities so as not to interfere with any curricular or extracurricular activities and, during normal duty hours, makes the school and its facilities available as the principal directs
- Ensures the proper instructional environment, including temperature, ventilation and building safety
- Cooperates with staff and students to harmoniously achieve the purposes of the school

QUALIFICATIONS:

- Education: High school graduate, or equivalent
- Supervisory Ability
- Experience: Considerable experience in plant operation and maintenance, cleaning methods and procedures, repairs, security, heating and ventilation
- Communication: Ability to communicate effectively and work well with persons at all levels of the school community

Coleman is the only maintenance person in the District. Coleman also performs custodial duties and his hours are Monday through Friday from 6:00 a.m. to 3:00 p.m. There are four custodians and one Green Thumb Worker in the District. There is a day custodian at the middle school whose hours are from 6:45 a.m. to 3:45 p.m. The second custodian begins working at

3:00 p.m. at the high school and the third custodian begins working at 2:00 p.m. and works until 10:30 p.m. at the middle school and Clear View Elementary. The fourth custodian works at the Silver Creek elementary school. The Green Thumb Worker is not employed by the District but performs custodian duties on Monday, Tuesday and Wednesday for six hours each day.

Coleman has never formally disciplined an employee of the District and as the District has no formal evaluation procedure, he has not formally evaluated any of the custodians. Coleman participates with a school principal in interviews of new hires and in three of four instances the applicant he preferred was hired. Coleman does not approve leave time for the custodians.

The pay rate for the Head of Maintenance is \$2.25 per hour higher than the Custodian pay rate. However, due to longevity pay, senior custodians are paid more than Coleman.

Coleman does not prepare the maintenance and custodial budget and is not familiar with the budget. Coleman did order some new floor scrubbers when the Superintendent told him there was about \$5,000 surplus in the budget. Coleman also recommended to the District's Board that a personal lift be purchased in order to safely change lights in the gymnasium and the Board approved this purchase. Coleman does purchase minor hardware items as needed but if the cost is more than \$150-200, he consults with the Superintendent.

6. The Head Cook has supervisory duties and responsibilities in sufficient combination and degree to make her a supervisor.

7. The Head of Maintenance does not have supervisory duties and responsibilities in sufficient combination and degree to make him a supervisor and does not have sufficient participation in the formulation, determination and implementation of policy or sufficient authority to commit the District's resources to make him a managerial employee.

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

### **CONCLUSIONS OF LAW**

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

2. The Head of Maintenance is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., nor a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

**ORDER CLARIFYING BARGAINING UNIT**

1. Head Cook is hereby excluded from the bargaining unit described in Finding of Fact 3.
2. The Head of Maintenance shall continue to be included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of July, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

I dissent.

James R. Meier /s/

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James R. Meier, Chairperson

**Rib Lake School District (Support Staff)**

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

**POSITIONS OF THE PARTIES**

**Union**

The Union contends that the two positions are neither supervisory nor managerial. With respect to the Head Cook, the Union observes that she has had some involvement in hiring employees and has the authority to find substitutes, but does not effectively recommend promotion, transfer, discipline or discharge of food service workers. It admits that the Head Cook has de minimis authority to direct and assign the work force but only upon approval of the Administration. It points out that there are only six food service workers in the District scattered throughout four buildings, and the Head Cook could only recall one time that she visited another building. It argues that the level of pay for the Head Cook is not that commensurate with that of a supervisor as three other Food Service employees are paid more than the Head Cook and the base pay is only \$.75/hour more than the Assistant Cook. It submits that the Head Cook spends the vast majority of her time doing food preparation, planning menus and ordering and little time directing employees and could be more appropriately called a lead worker. It notes that the Head Cook does not exercise independent judgment as her supervisors have the final say in all matters. It concludes that the Head Cook has minimal supervisory duties and does not meet the requirements to be a supervisor under Sec. 111.70(1)(o)1, Stats.

The Union contends that the Head Cook does not participate in management policy and though she may set the menu and purchase routine grocery supplies, she does not set the budget and does not have managerial authority.

With respect to the Head of Maintenance, the Union argues that he does not effectively recommend the hiring of custodians, and notes that after interviewing candidates for a position his recommendation was ignored. It submits that there is no evidence the Head of Maintenance has authority to effectively promote, transfer, discipline or discharge, and the mere fact that he told an employee that he “needs to do a better job” is not suggestive of a disciplinary action. It stipulates that the Head of Maintenance has authority, but only upon the approval of the administration, to direct and assign the work force. It insists the work assignments are routine and this routine authority is indicative of a working foreman or lead worker, not a supervisor.



The Union points out that there are only four custodians and argues the building principals supervise them, not the Head of Maintenance. The Union argues that the rate of pay for the Head of Maintenance does not reflect supervisory status but is for his skill in dealing with plumbing and heating. It maintains that the Head of Maintenance spends the vast majority of his time on cleaning and maintenance and has no authority to assign overtime or approve sick days or leave. The Union contends he does not exercise independent judgment in supervision as someone else must approve everything. It concludes that the Head of Maintenance does not meet the factors necessary to confer supervisory status, and he is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats.

In regards to managerial authority, the Union states that the Head of Maintenance does not participate in management policy, except to follow policy set by the administration. It concedes that the Head of Maintenance has authority to purchase routine supplies, but argues he does not set the budget. It observes that he bought floor scrubbers but contends this purchase was initiated by the Superintendent approving and allocating the necessary funds.

The Union argues that the District is “making mischief” in this unit clarification because the District at first sought to clarify the two positions before the election and then included them voluntarily and now after the election seeks to exclude them, even though the positions have not been impacted by changed circumstances. It insists that the District made a deal and should live with it. It seeks denial of the petition leaving the unit intact.

### **District**

The District contends that the two positions should be excluded from the bargaining unit as they are held by supervisors and/or managerial employees.

The District submits that the Head of Maintenance is a supervisor as he has authority to transfer employees, effectively recommending the transfer of Nancy Mayer to the day shift, and has participated in interviewing new hires where all but one of his recommendations were followed. It observes that he verbally disciplined and warned a custodian for poor work performance and later, after consultation with the Principal, the custodian was discharged. It asserts that the Head of Maintenance directs the work activities of the custodial staff. It claims that he has the authority to grant or deny requests for time off, but does not involve himself in scheduling vacations. It points to the job description for the Head of Maintenance as clearly indicative of general supervisory authority. It notes that he is the only immediate supervisor of the custodial staff and the Green Thumb employee. It states that his primary responsibility is to supervise and his compensation level reflects this responsibility. Although he is paid less than one custodian, the District argues this is due to seniority compensation and asserts the Head of Maintenance received an immediate increase upon promotion from custodian to Head of Maintenance indicating compensation not only for his skill but for his supervision of employees.

The District observes that the Head of Maintenance evaluates the Green Thumb program, conducts a yearly written evaluation of the Green Thumb worker and signs and approves his time sheet. It maintains that he also trains new employees. It insists that he has authority to exercise independent judgment and discretion in the supervision of employees. It states that the Head of Maintenance coordinates and schedules staff on a day-to-day basis, independently evaluates and verbally reprimands staff, and directs them to perform duties. It concludes that under relevant case law, the Head of Maintenance is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and should be excluded from the bargaining unit.

The District contends that the Head of Maintenance is a managerial employee. It observes that he is responsible for the heating and ventilating systems, plumbing and lighting, lawns, parking, athletic and playground areas and for budgetary and inventory control regarding maintenance. It claims he can expend and allocate resources as evidenced by his purchase of \$4,800 scrubbers and a personal lift which was a major unbudgeted item. It concludes that he regularly allocates the District's resources to an extent which significantly affects the nature and discretion of the District's operations which thus establishes that he is a managerial employee.

The District contends that the Food Service Supervisor is a supervisor. It argues that the Food Service Supervisor (Head Cook) has effectively recommended the hiring of employees, hires substitutes, and has directed an employee to improve her performance or face discipline or discharge. It claims this factor alone is sufficient to conclude that the Head Cook is a supervisor.

The District asserts that the Head Cook exercises complete control over the direction and assignment of food service personnel. It notes that she has supervisory authority over five full-time or part-time employees, substitutes and student workers and argues the evidence failed to establish that the school principals or Superintendent exercised any authority over these employees. The District concedes that others are paid more than the Head Cook but contends this is based on seniority. The District also alleges that although the Head Cook performs food service work, she also supervises the employees, not just activities. It insists that she exercises independent judgment and should be found to be a supervisor and excluded from the bargaining unit.

The District maintains that the Head Cook is also a managerial employee. It submits that she has substantial authority to commit District funds and has sole unfettered control over \$100,000 as she selects the products and vendors and signs off on the orders and the receipt of products. The District argues the Superintendent simply rubber stamps her decision. It also notes that the Head Cook played an essential role in the decision to close the kitchen at Silver Creek School. It concludes that she meets the statutory definition of a managerial employee, and should be excluded from the bargaining unit.

### **Union's Reply**

The Union contends that, contrary to the District's assertion, the Head of Maintenance did not recommend the transfer of Nancy Mayer, as she made the request to transfer to the administration, and the Head of Maintenance simply went along with the request. It argues that when the District hired an applicant the Head of Maintenance did not recommend, the District demonstrated that the custodial supervisor is the Principal. As to the discipline of a custodian, the Union refers to the transcript which establishes that the Principal caught the custodian watching television, not the Head of Maintenance, who did not write any formal recommendation on the employee who was terminated.

The Union, contrary to the District, contends the record establishes that principals arrange for a substitute and the Head of Maintenance is not even notified. It reiterates that the record is clear that the Head of Maintenance does not have effective authority to recommend the hiring, promotion, transfer, discipline or discharge of employees. The Union disputes the District's claim that the Head of Maintenance sets the schedules for the custodians. It contends the Head of Maintenance does not schedule the lone Green Thumb worker, or decide how to utilize him other than asking him to clean up an accidental mess. It asserts that building principals grant or deny time off for custodial staff and it notes further discrepancies in the District claim that the Head of Maintenance schedules custodians in the summer or sets their hours. It also rejects the District's statement that the Head of Maintenance is the only immediate supervisor of the custodial staff, as the record shows time and time again that the building principals are the direct supervisors of the custodians and the Head of Maintenance is not a supervisor. It states his rate of pay is for his plumbing and heating skills and not for supervising custodial staff. It rejects the assertion that the Head of Maintenance evaluates employees, as he does not and only fills out a yearly form on the Green Thumb worker. It insists the record fails to establish that any request for overtime has been approved by the Head of Maintenance or that any new employees have been trained by the Head of Maintenance. It argues that the record shows that he has minimal supervisory authority and does not meet the statutory requirement to be found to be supervisory.

With respect to his managerial status, the Union submits that ordering day-to-day supplies, the acquisition of three scrubbers initiated by the Superintendent and the purchase of the electric lift establishes that the Head of Maintenance has no input whatsoever in the process of allocating resources. It states that there is no doubt that the Head of Maintenance is neither supervisory nor managerial.

The Union observes that the District stresses the Head Cook's ability to hire employees, but notes that this is only in conjunction with a hiring team employing a consensus approach. It claims the District has

twisted her testimony as regards discipline, and it argues that there was no evidence of her disciplining anyone. It does not deny that the Head Cook directs and assigns employees, but these are routine work schedules and job assignments which are insufficient in and of themselves to determine supervisory status. The Head Cook, according to the Union, does not evaluate anyone and her pay does not show that she is paid for supervision. It insists the Head Cook spends most of her time doing food preparation and cleaning up, and little time is spent on supervisory duties. It asserts that her supervisory duties are minimal and not sufficient to meet the statutory requirements of a supervisor.

The Union disputes the District's assertion regarding the managerial implications of the closing of the kitchen at Silver Creek. It contends this was the decision of the administration and that the Head Cook simply stated that she could take on the additional cooking responsibility if it was closed. It submits the evidence is insufficient to meet the definition of managerial.

The Union observes that the District portrays the two incumbents as obviously wanting to avoid being classified as supervisors or managers and it questions how this conclusion can be drawn. It claims that if the District wishes them to be supervisors, then it should treat them as such. It insists that neither should be excluded from the bargaining unit.

### **District's Reply**

The District contends that the Union's brief points largely to conclusory testimony and does not explain specific examples of supervisory and managerial status to the contrary. It stands by its assertion that only one employee makes more than the Head Cook. It submits that the Head Cook's wage rate is the highest but others earn more per hour based on their greater service with the District.

### **DISCUSSION**

The Union has raised a threshold question of whether the District should be allowed to litigate the supervisory and managerial status of the two employees. We have consistently held that where the unit status of employees has been based on agreement between the parties that the employees are or are not supervisors, or managerial, confidential, or executive employees, a unit clarification can be filed to clarify the employees' right to be included in or excluded from a unit. CITY OF CUDAHY, DEC. NO. 12997 (WERC, 9/74); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 13134-A (WERC, 1/76); CITY OF SHEBOYGAN, DEC. NO. 7378-A (WERC, 5/89); MANITOWOC COUNTY, DEC. NO. 7116-C (WERC, 11/91); ELCHO SCHOOL DISTRICT, DEC. NO. 27640-C (WERC, 4/97). Here, the District originally proposed that the

two employees in question be excluded from the unit but ultimately agree that the employees were not supervisors and thus were eligible to vote in the representation election. Viewing the record as a whole, we are persuaded that the inclusion of the employees was based on an agreement that they are not supervisors. As more fully discussed in MANITOWOC SCHOOLS, DEC. NO. 29771-B, it is therefore appropriate to proceed to the merits of the petition.

We acknowledge the dissenting opinion of Chairperson Meier. We understand the frustration expressed in this case by the Union. It echoes municipal employer arguments made in other unit clarification cases where the union seeks to alter a previously stipulated bargaining unit. See MANITOWOC SCHOOLS, DEC. NO. 29771-B (WERC, 7/2000).

We do not disagree that the policy we follow and apply again today can lend itself to a certain political gamesmanship by either side. For immediate tactical advantage related to the election results being sought, either side may agree to the position held by that person is a statutory fit for inclusion or exclusion. If a majority of the stipulated voters vote against representation, the matter ends. If a majority votes in favor of representation, an attempt to adjust the unit to a closer conformity to the statutes can still be made.

There appear to be two possible means of preventing this pre-election tactical maneuvering.

One such means would be for the Commission to carefully scrutinize the make-up of *all* proposed bargaining units, whether or not the parties have agreed to a list of eligible voters in the representation election. At present, the Commission engages in a careful review of only those proposed bargaining units on which there is disagreement, i.e., the parties cannot agree on who should be included or excluded. As to prospective bargaining units where the parties stipulate membership, however, the current Commission practice is to provide only a cursory review. Absent an obvious flaw in the unit's proposed composition, a *pro forma* approval always follows.

This practice is consistent with Commission preference to rely on the parties to govern themselves in accordance with the statutes. Most do. Thus under this policy, as a practical matter the Commission generally allows the parties to stipulate to whatever bargaining unit is agreeable to each. It is only if there is disagreement between the parties that the Commission will intervene.

Besides granting the parties the opportunity of attempting to reach their own agreement, this policy has the additional advantage of administrative efficiency. If the Commission were to begin to scrutinize closely every proposed stipulated bargaining unit, it would be required to conduct formal hearings and receive testimony and evidence as to each proposed unit. In our view, this procedure would be not only cumbersome and create an unnecessary administrative burden to the Commission and its staff, but create unacceptable delays and expense to the parties we serve. Moreover, given the delays that would necessarily be caused, the procedure might well engender new forms of gamesmanship, quite possibly more egregious than the mischief complained of by our dissenting colleague.

In his dissent, Chairperson Meier proposes a second option. Chairperson Meier urges the Commission to renounce its current policy and hold stipulating parties to any agreement they may enter that places employees in or out of a bargaining unit, absent a material change in duties and responsibilities. Under this theory, a deal would remain a deal, except for changes in position duties.

This is a tempting prospect. In our view, however, it suffers from a fatal flaw: the statutes do not permit a mixture of supervisory, confidential, managerial or executive employees in the same bargaining unit with other municipal employees. See Secs. 111.70(1)(i), 111.70(2) and 111.70(6), Stats. By forcing parties to live with the bargaining unit composition deals they have struck even though contrary to statute, in effect the Commission legislates new law instead of administering existing law.

We are not legislators. If the problem described by our dissenting colleague cuts as deeply as it appears to him, it is a problem to be addressed by the Legislature. Until the Legislature chooses to modify the law, however, we believe we have the obligation of applying it as it is written.

### **Legal Standards**

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 employees, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

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 employees;
2. The authority to direct and assign the work force;
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 skill or 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. MILWAUKEE PUBLIC SCHOOLS, DEC. NO. 6595-C (WERC, 5/96).

We have consistently held that not all of the above factors need to reflect supervisory status for us to find an employee to be a supervisor. Our task therefore is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an employee to be a supervisor. ONEIDA COUNTY, DEC. NO. 24844-F (WERC, 1/99).

With respect to managerial status, we have stated the following:

The legislature has excluded “managerial” employees from the Sec. 111.70(1)(i), Stats., definition of “municipal employee,” but it has not provided a statutory definition of that term. Thus, the definition of a managerial employee has been developed through case law.

There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers whether the individual possesses the authority to commit the employer’s resources.

For an individual to assume managerial status based on participation in policy, such involvement must be “at a relatively high level of responsibility.” Managerial status based on allocation of the employer’s resources necessarily entails significantly affecting the nature and direction of the employer’s operations, such as the kind and level of services to be provided or the kind and number of employees to be used in providing services. TAYLOR COUNTY, DEC. NO. 24261-E (WERC, 7/97).

### **Food Service Supervisor/Head Cook**

We find that the record contains sufficient evidence to establish that the Food Service Supervisor (Head Cook) is a supervisor.

She has effectively recommended the hire of all new food services employees and the record reflects that the District would not hire an employee over her objection. As to discipline, she has verbally reprimanded an employee but there is no evidence that would indicate that she has independent authority to impose more significant discipline. However, the record as a whole, particularly given her direct on-site supervision of the two Assistant Cooks, persuades us that she does have authority to effectively recommend more serious discipline.

The Head Cook has substantial authority to direct and assign the work of the food service employees. She approves or disapproves leave requests and determines whether a substitute is needed when a regular employee is absent. The Head Cook supervises five employees and neither the principals nor the Administrator play any significant supervisory role.

Her pay rate is \$.75 per hour more than any other food service employee rate.

While she spends a substantial amount of time performing non-supervisory duties, the record satisfies us that the Head Cook exercises significant independent judgment in the supervision of the food service employees. In light of her significant hiring and disciplinary authority and her largely independent overall responsibility for the Food Service Department, we are satisfied that she is supervising employees not activities and that she should be excluded from the bargaining unit as a supervisor.

Given our conclusion, we need not and do not decide whether the Head Cook is also a managerial employee.

In reaching our decision, we have considered the various cases cited by the Union but find them all to be distinguishable from the case at hand. In UNION GROVE GRADE SCHOOL, DEC. NO. 15820-A (WERC, 12/76), the Head Cook had some involvement in hiring, yet lacked any disciplinary authority. In WINTER JOINT SCHOOL DISTRICT, DEC. NO. 16467 (WERC, 7/78), the Head Cook lacked authority to hire, evaluate and discipline employees. In LACROSSE AREA JOINT SCHOOL DISTRICT NO. 5, Dec. No. 14653 (WERC, 5/76), the role of the Building Principal in hiring, discipline and hours of employees established that Cook Supervisors and Head Cooks were not supervisory. Similarly, in GERMANTOWN AREA SCHOOLS, DEC. NO. 14762 (WERC, 7/76), the role of the Principals established they were the supervisors, and not the Head Cooks. In SCHOOL DISTRICT OF DRUMMOND, DEC. NO. 16614 (WERC, 10/78), the Head Cooks did not hire, fire or discipline employees. Similarly, in NORTHWOOD SCHOOL DISTRICT, DEC. NO. 20022 (WERC, 10/82), the Head Cook did not hire, fire, discipline, promote or transfer employees, or effectively recommend such actions.

We are of the opinion that the instant facts are similar to those in SCHOOL DISTRICT OF LOYAL, DEC. NO. 18149 (WERC, 10/80), where we found the Head Cook was supervisory on



the basis that she had complete control of the day-to-day decisions affecting the food service operation and employees and her hiring recommendations have been effective. See also, WATERTOWN SCHOOL DISTRICT, DEC. NO. 29644 (WERC, 8/99), where we concluded that the Middle School Cook Manager was a supervisory employee, even though the Cook Manager spent a substantial amount of her time cooking and serving food, and was not paid at a level which reflects supervisory status.

### **Head of Maintenance**

We find the record does not establish that the Head of maintenance is a supervisor.

Looking first at the question of his authority to effectively recommend hiring, promotion, transfer or discipline/discharge, we conclude that the Head of Maintenance does not have such authority.

We acknowledge that he and the appropriate building principal interview applicants for custodian positions and that in three of four instances he and the principal agreed on who should be hired. However, it is the fourth instance that persuades us the Head of Maintenance does not effectively recommend hiring. In the fourth circumstance, the principal hired an individual he knew instead of the candidate preferred by the Head of Maintenance. When this evidence is put in the context of the building principal being the individual who will have daily management contact with the individual assigned to clean the principal's school, we are persuaded that it is the principal who makes the effective hiring recommendation. Thus, in contrast to the evidence of the Head Cook's effective hiring authority, the District will and has hired employees over the objection of the Head of Maintenance. While the Head of Maintenance obviously has input, we concluded that input does not rise to the level of authority to effectively recommend hiring.

As to discipline, we conclude from the record that the Head of Maintenance's independent disciplinary authority is limited to verbal reprimands. We are further satisfied that his authority to effectively recommend discipline is also quite limited. The Head of Maintenance's limited involvement in the discharge of an employee by the building principal for watching television satisfies us that the principals are the individuals with significant disciplinary authority over the custodians. Our conclusion in this regard is supported by the testimony of a custodian that he received a verbal reprimand from the building principal – not the Head of Maintenance.

Regarding transfer, the evidence of the Mayer and Stein matters persuades us that the Head of Maintenance has limited involvement in transfer decisions.

Turning to the authority to direct and assign the work force, the record establishes that the Head of Maintenance has little contact with the custodial employees and that the building

principals direct the work of the custodians in their building. It is the building principal who generally receives and approves or disapproves leave requests (sick leave and vacation) and who would authorize any overtime for custodial employees.

As to the number of employees supervised and the presence of others with supervisory authority, there are four custodians. The Green Thumb worker is not an employee of the District and thus the interaction between the Head of Maintenance and this individual is not relevant to our determination of supervisory status. VERNON COUNTY, DEC. NO. 13805-I (WERC, 2/2000). As noted earlier herein, the building principals exercise greater authority over the custodians than does the Head of Maintenance.

Regarding pay levels, the Head of Maintenance's pay rate is \$2.20 per hour higher than the custodians. We are satisfied from the record that this pay rate primarily reflects his skills rather than supervision.

The Head of Maintenance spends virtually all of his time performing maintenance/custodial work. On the limited occasions when he directs the work of custodians, he exercises little independent judgment. The record satisfies us that to the limited extent he does any supervision, it is of an activity rather than employees.

Given all of the foregoing, we conclude that the Head of Maintenance is not a supervisor. Unlike the Head Cook who has substantial hiring and disciplinary authority, the Head of Maintenance is a lead worker. The building principals function as the supervisors of the custodial employees.

We are satisfied that our conclusion is consistent with prior Commission cases cited by the District. The individuals found to be supervisors in SCHOOL DISTRICT OF MONTELLO, DEC. NO. 17829-B (KNUDSON WITH FINAL AUTHORITY, 2/82); SOMERSET SCHOOL DISTRICT, DEC. NO. 24968-A (WERC, 3/88) and NORTHWOOD SCHOOL DISTRICT, DEC. NO. 20002 (WERC, 10/82) all had significant disciplinary authority – which we have concluded the Head of Maintenance lacks. As to the Director of Maintenance found to be a supervisor in SCHOOL DISTRICT OF MAPLE, DEC. NO. 26924 (WERC, 2/81), he differs from the Head of Maintenance in dispute here because he evaluated employee performance, supervised 16 employees and spent only 50 percent of his time performing the same type of work as the employees he supervised.

Turning to the question of managerial status, the District argues that the Head of Maintenance allocates the District's resources to an extent which significantly affects the nature and direction of the District's operations. We do not agree.

As to preparation of the maintenance portion of the District budget, we are persuaded that the District Administrator has the primary responsibility and that the Head of Maintenance's input would be limited to providing information about what was spent the prior year.

As to his authority to commit existing resources, we note that his independent purchase authority is limited to \$150 - \$200. While he was significantly involved in the purchase of floor scrubbers and personal lift, the floor scrubber purchase resulted from the Administrator advising him of a \$5,000 surplus in the budget which was available for use and the personal lift allowed existing needs (changing gym lights) to be performed more safely. Neither purchase rises to the level of significantly affecting the nature and direction of the District's operations.

As to managerial status, the District also argues that the Head of Maintenance determines which services will be performed by non-District employees. This argument is based on the fact that if the Head of Maintenance (or some other District employee) does not have the skills to perform a needed repair, he contacts an independent service provider. Such decisions clearly do not rise to the level of affecting the nature and direction of the District's operations.

Although the Head of Maintenance clearly has important responsibilities, the foregoing reflects our view that he is not a managerial employee.

### Summary

We conclude that the Food Service Supervisor/Head Cook is a supervisor and is excluded from the unit. The Head of Maintenance is neither a supervisor nor a managerial employee, and thus remains in the existing bargaining unit.

Dated at Madison, Wisconsin this 19th day of July, 2000.

### WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**Rib Lake School District (Support Staff)**

**Dissenting Opinion of Chairperson James R. Meier**

As in MANITOWOC SCHOOLS, DEC. NO. 29771-B (WERC, 7/2000), (where a union sought to renege on a prior agreement excluding employees from a bargaining unit), I would dismiss the instant unit clarification petition through which the District seeks to renege on a prior agreement including employees in a unit. Where parties agree that an employee/position is in or out of the unit, I conclude they should be held to that agreement absent a material change in duties and responsibilities. No such change is present here. Therefore, I dissent.

I believe the majority opinion makes the best case that can be made for the Commission's long standing willingness to allow litigation of "municipal employee" status in the face of a prior agreement of the parties resolving that very issue. However, given the damage that such litigation does to labor management relationships and thus to labor peace, I no longer find the majority rationale to be a sufficient basis for allowing such litigation.

The general rule is that a "deal is a deal" and thus that the Commission will not entertain a petition for unit clarification seeking to undo the deal. However, when establishing this general rule in CITY OF CUDAHY, DEC. NO. 12997 (WERC, 9/74), the Commission created an exception that allowed unions and employers to renege if the deal was premised on an agreement that the employees in question were or were not supervisors, or managerial, confidential or executive employees. The majority argues that the rationale behind this exception is the view that inclusion of non-municipal employees in a bargaining unit is prohibited by statute and that it is for the Commission not the parties to determine municipal employee status.

The majority's language in MANITOWOC SCHOOLS states it this way: "We do so because statutory rights of municipal employees under Sec. 111.70(2), Stats., are at stake and because we have the statutory responsibility to administer the statutes which create those rights." But that is merely a rationalization for poor policy, for as the majority points out in MANITOWOC SCHOOLS, footnote 1, "where there are no issues regarding 'municipal employee' status and the parties reach an agreement on whether employees should or should not be included in a bargaining unit, we honor the parties' agreement and will not rule on the merits of a unit clarification petition which seeks to 'undo the deal,'" Thus, the majority would be enforcing the agreement if it did not give any reason whatsoever for the inclusion or exclusion of the employees in question. Would such employees not have statutory rights?

Further, evidence that "statutory rights" is a mere rationalization for poor policy is the fact that the Commission will not accept petitions for unit clarification from employees who

believe they are not supervisory, confidential or managerial and thus are wrongly excluded from a unit or who believe they are supervisory, confidential or managerial and thus wrongly included in a unit. Do they not have statutory rights at stake and does not the Commission have the “statutory responsibility” to administer the statutes which creates those rights?

The majority asserts that my result is “fatally flawed” because it has the potential for allowing non-municipal employees (i.e. supervisors, etc.) to be impermissibly included in a bargaining unit with municipal employees. I would only note that by not allowing unit clarification petitions to be filed by unit employees who believe they are supervisors, etc, we have historically created the same potential risk. Thus, if my result is contrary to law, so is our refusal to process such unit clarification petitions.

Thus, I do not find the majority rationale persuasive.

As is evident from the record in this case, our willingness to allow parties to renege on previously reached agreements encourages gamesmanship, generates ill will and breeds contempt for the parties, the law and the Commission. These impacts are also contrary to our statutory obligation to proceed in a manner that enhances labor peace.

Thus, I dissent.

I believe the Commission should prospectively renounce the poor policy which the majority restates and hereby announce that I will vote to hold parties to an agreement placing employees in or out of a bargaining agreement absent a material change in duties and responsibilities.

Dated at Madison, Wisconsin this 19th day of July, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

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