

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
LAKEWOOD UNISERV COUNCIL (WEAC)

Involving Certain Employes of
**WATERTOWN SCHOOL DISTRICT
(FOOD SERVICE)**

Case 49
No. 57126
ME-3696

Decision No. 29694

Appearances:

Davis & Kuelthau, S.C., Attorneys at Law, by **Ms. Susan Love**, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, appearing on behalf of the Watertown School District.

Mr. Michael McNett, Executive Director, Lakewood UniServ Council (WEAC), 13805 West Burleigh Road, Brookfield, Wisconsin 53005 and **Mr. Steven Pieroni**, Staff Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the Lakewood UniServ Council.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION**

On December 20, 1998, Lakewood UniServ Council (WEAC) filed a petition for election with the Wisconsin Employment Relations Commission seeking to represent all regular full-time and regular part-time food service employes of the Watertown School District, including Production Manager, Cook Manager, Cook, Transporter, Cook Assistant, Baker, General Assistant and Elementary Server, but excluding all managerial, supervisory or confidential employes.

No. 29694

The District sought a hearing on the petition because it believes that one Production Manager and two Cook Managers (one each at the Middle School and High School) should be excluded from the collective bargaining unit as supervisors.

A hearing was held at Watertown, Wisconsin on April 1 and 13, 1999 before Commission Examiner Sharon A. Gallagher. The hearing was transcribed and the parties filed briefs and reply briefs, the last of which was received on July 19, 1999.

The Commission, having reviewed the evidence and the arguments of counsel, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Lakewood UniServ Council (WEAC), hereafter the Association, is a labor organization and has its offices located at 13805 West Burleigh Road, Brookfield, Wisconsin 53005.

2. Watertown School District, hereafter the District, is a municipal employer and has its offices located at 111 Dodge Street, Watertown, Wisconsin 53094-4470. The District provides food services to students and the community.

3. During the 1993-94 school year, the District's Food Service Department (FSD) had revenues and expenditures of just slightly over \$600,000; the FSD then served eight District schools including six elementary schools, the high school and the middle school as well as two private schools. In 1993-94, the District had 26 food service employees who served approximately 232,000 lunches, and 8,600 breakfasts using the one production kitchen the District then possessed.

During 1998-99, the District's food service budget increased to over \$1.2 million and the District projected that over 520,000 lunches, and over 37,000 breakfasts would be served during the year. The District now employs 46 food service employees in 54 positions. The number of schools receiving food service from the District increased from 10 to 15, the District having gained private contracts with five additional private schools. The District now has two production kitchens in operation.

The District has increased its concession stand revenues from zero in 1993-94 to over \$12,000 in revenue annually in 1998-99. In 1998-99, the FSD also had a number of regular catering contracts, including athletic banquets, music concerts, chili suppers, tailgate parties and administrative meetings, all of which it caters for a charge. During all times relevant, the FSD also provided summer school food service (approximately 4,000 meals per year) during the weeks that summer school was operating.

4. The District employs a Supervisor of Nutrition Services who is responsible for the overall operation of the District's Food Service Department. Armando Martinez has been employed by the District since 1995 in this position and currently earns an annual salary of \$33,000 for 10.5 months of work. Martinez reports to the Director of Business Services, Dennis Mudler.

The job description for the Supervisor of Nutrition Services states in relevant part as follows:

. . .

Position Description: Plans, organizes, directs, administrates, and assumes the responsibilities of the nutrition program in the school district according to the policies approved by the Board of Education. Recommends policies, procedures, and directions. Serves as consultant on matters pertaining to nutrition education and food services. Performs related duties as required.

Performance Responsibilities:

1. Interviews, screens, and recommends appointment of all food service personnel.
2. Standardizes personnel policies, levels of cleanliness, health, and safety.
3. Administers personnel policies and evaluates food service personnel.
4. Plans, checks, and supervises the preparation and serving of all menus for nutrition programs.
5. Supervises all catering and concession services.
6. Cooperates and assists with the food services instructional program and other appropriate units of instruction, stressing nutrition and/or food management.
7. Establishes effective working relationships among all departments within the school district.
8. Actively seeks the advice and involvement of parents, staff, and students in the planning and evaluation of menus.

9. Plans and implements a program for continuous professional growth and self-development of food service personnel.
10. Directs program activities in compliance with federal/state/local governmental regulations.
11. Reviews and authorizes free and reduced lunch applications.
12. Supervises and assists in the maintenance of all records and completion of all forms and reports as required or requested by the federal government, the Department of Public Instruction, and the Board of Education. (Additional separate support staff and equipment not needed.)
13. Consults, as needed, with school planners and architects on plans and specifications for new or renovated food preparation centers.
14. Prepares and administers the departmental budget, including all accounting procedures.
15. Purchases and maintains an inventory of all foods, supplies, and equipment.
16. Checks all bills and purchase orders for accuracy before presenting them to the Director of Business Services for payment.
17. Collects and checks all food service personnel time sheets.
18. Plans the acquisition, storage and disposition of government commodities as part of the ongoing nutrition program.
19. Checks all government reimbursements.
20. Visits all lunchrooms and cafeterias as often as possible, checking that high standards of health and safety are maintained, and observing possible improvements in operations.
21. Promote the Nutrition Program through the local press including, but not limited to, planned lunch menus and press releases.
22. Serves as a community resource for nutrition programs.

. . .

In addition to the above-listed general duties, Martinez is expected to: develop new business relationships and maintain existing contracts; handle publicity for the FSD; make a profit in the FSD; visit all 17 schools and meet with menu committees at the schools; prepare and submit bids for between \$65,000 and \$75,000 of food purchases per month; process 868 applications per year for full or reduced rate meals; order all supplies and equipment; and assist with building and remodeling projects affecting food service.

5. Martinez supervises the Production Manager. The job description for the Production Manager reads, in relevant part, as follows:

. . .

Qualifications:

- * General knowledge of school nutrition management.
- * Able to operate all food service equipment.
- * Possess strong time management, organizational, and communication skills.
- * Five years of supervisory experience.
- * High school graduate preferred.
- * Certified member of WSFSA/ASFSA.

Reports To: Supervisor of Nutrition Services

Performance Responsibilities:

1. Supervise the kitchen personnel in meal production, distribution and serving.
2. Supervise all sanitation procedures in the food service department.
3. Take the temperature of all hot food to assure the proper temperature has been reached.
4. Oversee all special catering events.
5. Assist with the preparation of the school nutrition menus.
6. Assist in orientation and training of food service employees.
7. Do daily transport sheets and weekly work sheets for food service employees.
8. Assist in evaluation of food service employees.
9. Assist with securing substitutes for staff absences.
10. Assist with daily reconciliation of lunch counts to computer lunch totals.

11. Assist with collection/deposit of lunch revenues in student and staff accounts.
12. Order and maintain supplies as directed by the Supervisor of Nutrition Services.
13. Assist in food and supplies inventory, and check in all deliveries.
14. Assist with DPI production record keeping.
15. Supervise the school nutrition program in the absence of the Supervisor of Nutrition Services.
16. Perform other duties as assigned by the Supervisor of Nutrition Services.

. . .

The Production Manager position was held by Barb Backhaus from 1995 until March 4, 1999, when she was demoted to the position of Catering Server. Prior to her demotion, Backhaus was employed for 180 days per year and received an hourly wage of \$10.87 which was approximately \$1.10 per hour more than a High School Cook. At the time of hearing, the District had not filled the Production Manager position.

As Production Manager, Backhaus regularly and independently assigned employees duties and directed their work.

During the four years that she was Production Manager, Backhaus regularly evaluated employees, filling out evaluation forms and meeting with employees on her own to discuss their evaluations. Martinez never changed any of the evaluations given by Backhaus during this period. However, on several occasions Martinez did prepare additional information for some evaluations, and when he did this, he was present during the evaluation meetings with those employees.

As Production Manager, Backhaus regularly conducted staff meetings with employees, and she and the Middle School Cook Manager (Loomis) regularly met with Martinez in supervisory meetings.

In Martinez' absence, the Production Manager assumes overall responsibility for the Food Service Department.

Regarding the hiring of regular employees, Backhaus regularly reviewed applications and generally interviewed applicants as part of an interview team which included Martinez. Backhaus recommended the hire of regular employees, and her recommendations were followed by Martinez, on all but two occasions. Backhaus also effectively recommended the hire of substitute employees.

Employees call the Production Manager at home or at work if they are ill and it is the Production Manager's responsibility, along with the FSD Secretary, to call substitutes to fill in for those absent. In the event a snow day occurs, both Martinez and Backhaus call employees to tell them that work is not going to be required that day.

Backhaus was authorized to approve overtime in order to finish the work of the day.

Although Backhaus could not promote or reward employees, Backhaus did recommend that Loomis be promoted to the Cook Manager position in the Middle School, which recommendation Martinez followed in mid-March, 1995.

The Production Manager often verbally reprimanded employees for misconduct. The verbal reprimands were often undocumented, although Backhaus kept informal file notes on employee misconduct which she referred to prior to evaluating employees each year.

Backhaus regularly assisted employees in cooking, preparing and serving food to the children and faculty.

Employees have come to the Production Manager with complaints regarding other employees or their working conditions. Backhaus passed these complaints along to Martinez.

6. The District employs a Cook Manager at the Middle School, Joan Loomis, and at the High School. Both of these positions are in dispute herein. The job description for the Cook Manager reads in relevant part, as follows:

. . .

Qualifications:

- * General knowledge of school nutrition.
- * Able to operate all food service equipment.
- * Possess strong time management, organizational, and communication skills.
- * Three years of supervisory experience.
- * High school graduate preferred.
- * Certified member of WSFSA/ASFSA.

Reports To: Supervisor of Nutrition Services and/or Production Manager

Performance Responsibilities:

1. Supervise the kitchen personnel in food preparation, cooking schedules, and daily production.
2. Supervise all sanitation and safety procedures in the food service department.
3. Use food efficiently and economically.
4. Observe appropriate sanitary procedures and safety regulations.
5. Take the temperature of all hot food to assure the proper temperature has been reached.
6. Assist with the preparation of food according to standardized recipes in amounts needed to meet daily production counts.
7. Maintain daily production and evaluation records.
8. Assist with the preparation of the school nutrition menus.
9. Assist in evaluation of food service employees.
10. Assist in orientation and training of food service employees.
11. Daily reconciliation of lunch counts to computer lunch totals.
12. Collection/deposit of lunch revenues in student and staff accounts.
13. Assist with daily transport sheets and weekly work sheets for food service employees.
14. Assist with securing substitutes for staff absences.
15. Assist in food and supplies inventory, and check in all deliveries.
16. Maintain supplies as directed by the Supervisor of Nutrition Services.
17. Assist with DPI production record keeping.
18. Perform other duties as assigned by the Supervisor of Nutrition Services.

. . .

Loomis was promoted to the Middle School Cook Manager position on March 14, 1995. There are nine FSD employees who work with Loomis at the Middle School. Loomis reports to Martinez who rarely visits the Middle School. Loomis is currently paid \$10.24 per hour which is \$.48 per hour more than a Middle School Cook.

Loomis schedules and holds staff meetings which Martinez does not attend. When employees are sick, they call Loomis and she procures a substitute for them. Loomis has the authority to authorize overtime in order to finish the work of the day, and does so approximately once a month.

Loomis has not been consistently involved in the hiring of new employees but did effectively recommend that two substitute employees be hired as regular employees.

Most of the employees at the Middle School have been there for some time, and therefore Loomis does not have to regularly direct or assign work.

Loomis has verbally counseled employees regarding their work/conduct on approximately four occasions during her tenure as Cook Manager. No further counseling or discipline was necessary in these cases and Loomis has never reprimanded any employee in writing.

During the last three years, Loomis has independently performed evaluations of the nine Middle School employees.

Loomis makes most of the food that is served at the Middle School, and spends approximately 50 percent of her time making all of the sandwich fillings, desserts, and baked goods, as well as serving food to customers at the Middle School.

7. Until her January 18, 1999 demotion, Lola Raatz was the incumbent of the Cook Manager position at the High School. Raatz had been in that position approximately two and one-half years.

Raatz regularly cooked the main entree and prepared the main line items at the High School, thawed the items that needed to be ready for preparation and did the inventory of foods at the High School. Almost all of her time was spent in the preparation and handling of food. In this regard, Raatz did not perform the jobs listed on her job description as numbers 7 through 12, 14, 17, and 18.

Raatz did not receive absence calls from employees and did not call in substitutes when employees were absent and never authorized overtime without first speaking to Martinez or the Production Manager.

Raatz was never invited to attend weekly supervisory meetings which Martinez held with Backhaus and Loomis. Raatz did not conduct staff meetings at the High School.

Raatz never participated in the hiring process or evaluated employees. Raatz was told by Martinez that if she received any employee complaints, she should bring those complaints to either Martinez or the Production Manager.

Raatz never disciplined employees, laid off employees, transferred employees or effectively recommended such actions.

8. The Production Manager has supervisory duties and responsibilities in sufficient combination and degree to render the occupant a supervisor.

9. The Cook Manager-Middle School has supervisory duties and responsibilities in sufficient combination and degree to render the occupant a supervisor.

10. The Cook Manager-High School does not have supervisory duties and responsibilities in sufficient combination and degree to render the occupant a supervisor.

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

CONCLUSIONS OF LAW

1. The Production Manager 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 Cook Manager – Middle School 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.

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

4. All regular full-time and regular part-time food service employees of the Watertown School District excluding supervisors and managerial, confidential and executive employees constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

5. A question concerning representation within the meaning of 111.70(4)(d)2.a. Stats., has arisen among the municipal employees in the collective bargaining unit set forth in Conclusion of Law 4.

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

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time food service employees of the Watertown School District, excluding supervisors and managerial, confidential and executive employees and other employees who were employed on August 23, 1999, except such employees as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employees desire to be represented by Lakewood UniServ Council (WEAC) for the purposes of collective bargaining with the municipal employer named above, or whether such employees desire not to be represented by such labor organization.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of August, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

WATERTOWN SCHOOL DISTRICT (FOOD SERVICE)

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION**

On December 17, 1998, the Association petitioned for an election among the District's food service employees.

The Association asserts that the Production Manager and the Cook Manager – Middle School and Cook Manager – High School are municipal employees who should be included in the unit. The District contends these individuals are supervisors.

POSITIONS OF THE PARTIES

Initial Briefs

Association

The Association argues that the Production Manager (PM) lacks the authority to hire, promote, demote, transfer, layoff or recall and to discipline or discharge Food Service Department (FSD) employees. In regard to the power to hire, promote, demote and transfer, the Association notes that Martinez makes the final decision in all of these areas and that the PM's recommendations regarding promotion and hire have been disregarded in the past by Martinez. In addition, the Association asserts that the PM was not consulted regarding the reduction in staff hours in 1998 and the PM's views were not followed regarding the demotion of Lola Raatz and transfers of certain employees.

In regard to the authority to discipline, the Association urges that the PM was merely a conduit for information in disciplinary situations and/or that she simply called for adherence to established rules and policies of the District. Thus, the Association contends that the Supervisor of Nutrition Services (who is regularly available at the High School) essentially directed the PM in disciplinary matters and/or approved her actions in this regard. In regard to discharge, the Association argues that the PM had no authority to discharge or reward employees.

Regarding the authority to evaluate employees, the Association urges that it was Martinez who approved all evaluations and that he added on to and signed evaluations on a regular basis and that the PM only performed evaluations on some High School employees.

Because the job description for the Supervisor of Nutrition Services clearly states that he is the direct supervisor of all FSD employees; because the PM is not paid as a supervisor (receiving approximately \$15,000 per year for her position); and because the PM's direction of employees is merely perfunctory, the Commission should find that the PM is a leadworker with limited independent judgment and not a supervisor to be excluded from the unit.

The Association argues that the record failed to show that the Cook Managers could hire, promote, transfer, layoff or recall employees or that they were authorized to discipline or discharge employees.

In this regard, the Association notes that the CM's authority to direct and assign employees was limited and essentially based upon routine rules and policies set by the District.

The Association observes that the Nutrition Supervisor and the PM had greater authority over the same employees that are allegedly supervised by the CMs; that neither Loomis nor Raatz was consulted or notified regarding the 1998 reduction in hours ordered by Supervisor Martinez; that the CMs have limited involvement in ordering material and making up menus; and that neither CM has been told that they are supervisors.

As Cook Managers, neither Loomis nor Raatz exercised supervisory authority at staff meetings, nor did either of them adjust grievances. Loomis stated that she had very limited involvement in conducting staff meetings. Raatz never conducted staff meetings.

In regard to hiring, the Association notes that Loomis' recommendations regarding hires were not followed by Martinez on at least two occasions; and that she was not consulted regarding the hire and/or transfer of four employees in the recent past. Although Loomis has evaluated the nine employees at the Middle School, the Association argues that she has done so for only three years and that she has shared this responsibility with Martinez.

In addition, the record showed that Raatz had no involvement in the hire or the evaluation of employees, the authorization of overtime or calling substitutes. In regard to discipline, Raatz was merely a conduit for information. The Association observes that Raatz complained to Martinez regarding the radio being played in the High School kitchen, and Martinez chose not to support her in this area, refusing to order employees to turn the radio down. As both Raatz and Loomis perform a substantial amount of production work during their normal workday, they should be found to be leadpersons in light of the fact that PM and Martinez are available and exert greater authority over employees. Thus, the Association urges that the CMs primarily direct activities, not employees, and exert or use limited independent judgment in their positions.

As Loomis and Raatz both earned \$10.24 per hour including a \$.30 per hour premium for an insurance concession, the Association contends that the Cook Managers are not paid for their supervisory duties, given the fact that the closest classification (Cook/Transporter) is paid only \$.48 per hour less.

In all of the circumstances, the Association urges that the Commission find that the Cook Managers to be leadworkers and not supervisory employees.

District

The District argues that the Production Manager and the Cook Managers have the authority to effectively recommend the hiring, promotion, transfer and discipline of employees. In this regard, the District noted that the PM and the Cook Manager-Middle School (CM-MS) had been involved in hiring regular employees in the past (although the turnover at the District is low) through interviewing candidates, and making recommendations for hiring in each case. In addition, the PM was responsible for hiring at least 75% of the substitutes on the substitution list without assistance or input from Martinez and the CM-MS recommended the hiring of two substitute employees into full-time positions, which recommendations were followed by Martinez.

Although the District has not discharged any FSD employees, numerous employees have been counseled and orally reprimanded for performance deficiencies and rule violations by both the PM and the CM-MS. In this regard, the District notes that the PM issued discipline without consulting with Martinez on most occasions. The District also observes that the CM-MS has disciplined employees on at least five occasions and that although the CM-HS had not disciplined anyone, she admitted that her job responsibilities include providing direction to the High School food production staff.

The District also argues that the PM and the CM-MS and CM-HS all have the authority to direct and assign employees and have done so. Both the CM-MS and PM create assignment lists of additional tasks to be performed. In addition, the CM-MS requested that all of her middle school employees make lists of their job duties so that she would be aware of the jobs they perform in case they needed to be replaced.

The District urges that the number of employees supervised and the number of other persons exercising greater, similar or lesser authority over those employees is a relevant factor in this case. The District argues that the Supervisor of Nutrition Services, Martinez, could not possibly provide day-to-day supervision of 46 employees in 54 positions assigned at 15 different locations. In addition, it is clear that Martinez spends a great deal of his time out of his High School office, performing duties which do not include the direct supervision of any of the FSD employees.

The District argues that failure of the CM-HS and the PM to perform the supervisory duties that Martinez had assigned them does not detract from the fact that those duties had been assigned to those incumbents. Thus, each of the disputed employees has independent supervisory responsibilities over a sufficient number of employees to warrant a determination of their supervisory status. Were the Commission to find that the three disputed employees were not supervisors, the Commission would be concluding that the Supervisor of Nutrition Services was the first-line supervisor over 46 employees at 15 different locations, a result which could not be supported by the case law.

Contrary to the Association, the District argues that Martinez primarily directs the food service operation, while the PM and Cook Managers supervise the employees to insure that they are completing all assigned tasks, obeying District policies and rules, and complying with all governmental regulations and sanitation standards. In addition, the District notes that the Production Manager is paid approximately \$.53 per hour more than the Cook Managers and \$1.11 per hour more than the highest-paid subordinate employee, while the Cook Managers earn \$.48 per hour more than the highest-paid subordinate employee. These rates, in the District's view, clearly recognize the additional supervisory skills and duties of these positions. The fact that the incumbents of the disputed positions perform some non-supervisory duties is not determinative of their supervisory status where, as here, the positions have significant supervisory responsibilities.

The District urges that the incumbents of the disputed positions exercise independent judgment and discretion in supervising their employees. In this regard, the District notes that the incumbents of the disputed positions authorize time off and overtime, call in substitute help and recommend hiring, assign work tasks to employees in order to complete work, resolve some employee complaints in Martinez's absence, observe and evaluate employees (preparing formal written evaluations for those employees), as well as making suggestions regarding their improvement on a day-to-day basis.

Because the District has created and filled three positions to supervise two production kitchens and 46 employees in 54 positions at 15 food service sites, it would be untenable, in the District's view, for the Commission to find that the District is entitled to only one supervisor.

Reply Briefs

Association

The Association argues that none of the disputed positions is occupied by a supervisor. In this regard, the Union notes that Martinez is readily available to supervise FSD employees; that he spends from five to eight hours per day at the High School (assuming he works 12 hour

days) and that he can and has actively supervised the work force at the High School. In addition, the Union points out that Martinez' job description specifically lists him as the supervisor of FSD employees.

In regard to the Production Manager, the Association asserts that the Manager was not in fact assigned to visit elementary schools and has not been disciplined for failing to visit those schools. In regard to staff meetings, the Association observes that Martinez was present at the High School and set the agendas for most of the staff meetings. In regard to discipline, the Association argues that much of what the PM did was covered by District policies, routine procedures or the Handbook, or was necessary to maintain sanitation levels, and as such, was related to the supervision of activities rather than employees. In regard to Backhaus' notes, the Association asserts that these were not kept for official use, were not placed in employee personnel files and that the record specifically did not show that Backhaus wrote up any employees in disciplinary documents. Regarding employee complaints, the Association argues that these were generally resolved by consensus with Martinez. Concerning annual training of "supervisors", the Association notes that other employees were offered this training as well as the PM and the CMs. Finally, in regard to Backhaus, the Association contends that she was demoted so that the District could argue more effectively that her position was non-supervisory. Because Backhaus did not recall hiring any substitutes on her own, because Backhaus stated that she did not write any of the interview questions used in the District, and because employees were hired over her objections, the Association urges the Commission to find the Production Manager a non-supervisory lead worker.

The Association contends that the Cook Managers are not supervisors and should be included in the unit. In this regard, the Association notes that Loomis did not make the final decision to install a snack bar at the Middle School on her own; that overtime decisions at the Middle School were essentially pre-approved by Martinez in order to finish a day's work and that overtime usage is infrequent; that Loomis was not involved in the hire or transfer of employees to the Middle School according to the record; that Loomis was not told to discipline employees; and that her rewarding of employees was done purely on her own initiative. In regard to personnel matters, the Association asserts that the Cook Managers have essentially deferred to Martinez on discipline and other personnel matters, leaving Martinez to essentially make these decisions.

Finally, in regard to Lola Raatz, the Association urges that she was demoted to discredit her testimony regarding the non-supervisory nature of the Cook Manager-High School position.

The Association asserts that the District does not need four supervisors and given the fact that Martinez and Mudler are available to supervise FSD employees, the Commission should include the three disputed positions in the collective bargaining unit.

District

The District argues that the Association's brief contains statements that are misleading and erroneous. In this regard, the District notes that the Association's initial brief stated that Martinez is the only supervisor in the FSD. On the contrary, the District urges that Martinez supervises the overall operation of the FSD but only directly supervises Loomis and Backhaus. Contrary to the Association's assertion, Martinez did not decide to reduce the hours of employees in 1998 – Dennis Mudler made this decision. In addition, the District notes that Martinez has delegated day-to-day supervision of employees to the disputed supervisors herein. Furthermore, the record showed that the PM and the CM-MS have effectively recommended the hire of employees.

The District observes that the PM and the CM-MS have the authority to evaluate employees and have done so on their own and that the PM has created a substitution list, hiring some of those substitutes on her own, and has the authority to call in substitutes as needed. In regard to discipline, the District notes that the PM and the CM-MS have authority to discipline employees and to conduct staff meetings, and that they have done so on numerous occasions.

Contrary to the Association's assertions, the District contends that Martinez does not supervise Middle School employees, as he is present in the Middle School only about 30 minutes per month, and Loomis makes all day-to-day supervisory decisions at the Middle School.

In sum, the District asserts that it does not need to reallocate supervisory duties which Martinez has appropriately delegated to the Production Manager and to the Cook Managers. In these circumstances, the District urges that the Commission should exclude all three positions and incumbents from the proposed collective bargaining unit.

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 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 workforce;
3. The number of employees supervised, and the number of other 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 skills or for his supervision of employees;
5. Whether the supervisor is primarily 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. See, for example, ONEIDA COUNTY, DEC. NO. 24844-F (WERC, 1/99).

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 employees and regular employees. The Manager independently evaluates employees on a regular basis. The Manager has the authority to approve time off and overtime. The Production Manager has regularly verbally reprimanded employees. Although verbal reprimands are not memorialized in the employees' personnel files, they are referred to when employees 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 employees. While the employees 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.

Dated at Madison, Wisconsin this 23rd day of August, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

