

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**GENERAL TEAMSTERS UNION LOCAL 662,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

Involving Certain Employees of  
**RICE LAKE HOUSING AUTHORITY**

Case 1  
No. 58137  
ME-3747

**Decision No. 30066**

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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Jill M. Hartley**, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of General Teamsters Union Local 662, International Brotherhood of Teamsters.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Steven L. Weld**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Rice Lake Housing Authority.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

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

On October 27, 1999, the General Teamsters Union Local 662, International Brotherhood of Teamsters, filed a petition with the Wisconsin Employment Relations Commission seeking an election in a bargaining unit of certain employees of the Rice Lake Housing Authority described in the petition as:

Dec. No. 30066

### All Maintenance Employees

The Authority asserts that a “maintenance employee” unit is not an appropriate unit; that a “wall to wall” unit is appropriate; and that maintenance employee Ronning is a supervisor.

Local 662 asserts Ronning is a municipal employee and argues that if an election is directed in a “wall-to-wall” unit, employee Wilcox should be excluded as a supervisor or confidential employee.

Examiner John R. Emery, a member of the Commission’s staff, conducted a hearing on April 14, 2000, in Rice Lake, Wisconsin. The parties filed briefs by June 29, 2000, and reply briefs by July 19, 2000. The parties submitted an additional Stipulation of Facts on December 21, 2000, and the record was thereupon closed.

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

### **FINDINGS OF FACT**

1. General Teamsters Union Local 662, International Brotherhood of Teamsters, herein the Union, is a labor organization with offices at 1280 West Clairemont Avenue, P.O. Box 86, Eau Claire, Wisconsin 54702-0086.

2. The Rice Lake Housing Authority, herein the Housing Authority or the Employer, is a municipal employer with offices at 132 West Marshall Street, Rice Lake, Wisconsin 54868. The Authority operates and maintains housing for elderly and low income tenants in Rice Lake, Wisconsin.

The positions within the Housing Authority and the occupants at the time of hearing are as follows:

<u>Position</u>	<u>Occupant</u>
Executive Director	Sam Rust
Assistant Director	Janice Olson
Office/Clerical	Debbie Wilcox
Office/Clerical	Pat Zager
Maintenance Supervisor	Mike Ronning
Maintenance	Bill Huehn
Part-time office/ part-time maintenance	Eric Yeager

The parties agree that the Executive Director and Assistant Director are supervisors and are properly excluded from any bargaining unit.

3. Maintenance employees Ronning and Huehn and maintenance/clerical employee Yaeger work 7:30 a.m. — 12:00 noon and 12:30 p.m. — 4:00 p.m. Monday through Friday.

The duties of the maintenance employees include: minor plumbing, heating, electrical and building repairs; cleaning and upkeep of residential units and common areas; grounds maintenance, lawn care and snow plowing; painting; and providing maintenance assistance to tenants as requested. Mechanical and carpentry skills are necessary, but no specialized training, apprenticeship or certification is required. None of the maintenance employees are journeyman craftsmen.

Clerical employees Wilcox and Zager work 8:00 a.m. — 12:00 noon and 1:00 p.m. — 5:00 p.m. Monday through Friday. They are responsible for office duties at the Housing Authority, including preparing and sending correspondence, filing, record keeping and communicating with the clients and the public. Their duties require knowledge and skills in word processing, working with office machines and interpersonal relations.

4. The maintenance employees circulate among the various facilities operated by the Authority, whereas the clerical employees work in Marshall Towers. Maintenance Supervisor Ronning also has an office at Marshall Towers.

5. All the full-time maintenance and clerical employees receive identical fringe benefits, which include health insurance coverage, retirement benefits, sick leave, holidays and paid vacation. Historically, the Housing Authority has considered all the maintenance and clerical employees as a single group when determining wages increases and has applied the same percentage wage increase to all employees.

6. In the early 1990s, the Housing Authority created a job description for the position of Maintenance Supervisor, which reads, in pertinent part:

**WISCONSIN ASSOCIATION OF HOUSING AUTHORITIES  
STANDARD JOB SPECIFICATION**

**Job Title/Class**

**MAINTENANCE SUPERVISOR/LEAD WORKER**

**Duties/Responsibilities**

Specific duties include, but are not limited to, the supervision, scheduling and assignment of daily duties of maintenance personnel, along with performing all working maintenance duties, inspect buildings, grounds and equipment, and determine priority in which repairs will be accomplished; prepare and manage the annual maintenance program, implement and maintain time, cost, materials, inventory, specifications, drawings and other necessary records; supervise

emergency and major repairs of buildings and grounds, as well as [sic] also doing the labor; responsible for preventative maintenance program; and perform the same duties of subordinate employees. Assist in budgeting and preparation of CIAP application for maintenance needs of labor, materials and contract costs. perform [sic] move-in, move-out, annual inspections and Section 8 Existing inspections. Responsible for the procurement of supplies and equipment in compliance with the procurement Policy and with approval. Interview contractors performing construction, modernization (CIAP) or other work with the Director of the Housing Authority. Perform any other duties as assigned by the Director.

Responsible for all maintenance, including: lawns, walks, driveways, interior common areas, exterior of buildings, all mechanical and electrical equipment, and maintenance repairs, both inside and out, as well as their garages. In periodically making repairs or checking the grounds, and apparent neglect vents on roofs, heating, garbage areas, hallway lighting, and heating, soft water units, water pumps, boilers, air compressors, and water heater pumps.

Assist working maintenance person perform labor including, but not limited to, the following:

Assist in hiring other maintenance and custodial personnel. Supervision of all maintenance and custodial personnel either full or part time. Also, supervision of seasonal workers, PIC program workers and/or Green Thumb Workers.

. . .

The Utility's first and only Maintenance Supervisor, Mike Ronning, was hired in November, 1994. The Utility's newspaper advertisement described the position as a "full-time maintenance-custodial person."

Ronning spends the majority of his time performing the same maintenance, upkeep and cleaning tasks as the other maintenance personnel. In addition, Ronning is responsible for prioritizing tasks and assigning duties to the other maintenance personnel, when necessary. Most maintenance duties are routine and are performed on a regular daily or weekly schedule.

Ronning is responsible for ordering necessary supplies and equipment and has independent authority to expend amounts up to \$200 without higher approval. Due to his ordering duties, Ronning is provided with an office.

Ronning approves sick leave and vacation requests for maintenance employee Huehn, but had no such responsibilities regarding part-time maintenance employee Yeager. Overtime is generally authorized by the Executive Director, but Ronning determines who will work the overtime hours.

Yeager is the only maintenance employee hired since Ronning has been employed as Maintenance Supervisor. Ronning was introduced to him at the time of his interview, but had no input into the hiring decision. Ronning has verbally reprimanded Huehn.

Ronning is paid \$10.50 per hour — 50 cents per hour more than Huehn — the other full-time maintenance employee. At the time of hearing, part-time maintenance employee Yeager was paid \$7.50 per hour for general maintenance work.

Ronning does not have supervisory responsibilities in sufficient combination and degree to be a supervisor.

7. Debbie Wilcox is a full-time clerical employee and holds the position of Housing Manager Secretary. She is paid \$10.81 per hour. Her job description describes her duties as follows:

. . .

Responsible for maintaining a clean, secure, well managed property with emphasis on resident selection and relations. Assists with other members of staff in formulating and implementing policy and procedures. Adheres to federal, state and local government rules and regulations.

Show vacant units.

Initial tenant screening to determine eligibility.

Prepare leases and have a thorough understanding of all documents.

Correspond with applicants and maintain waiting list.

Prepare routine government reporting forms.

Recertification notification and processing.

Collect rents and make deposits.

Work with resident council.

Resolve tenant complaints.

Respond to after hour emergencies.

Assist in organizing social programs and liaison with community organizations.

Assign maintenance functions.

Maintain adequate inventory of office supplies and equipment.

Maintain bookkeeping system for computer programs.

Assistance to Clients/Tenants/Landlords

Outreach and counseling as necessary to locate tenants for elderly/handicapped projects, family projects, and Section 8 Rental Assistance Program.

Certify income and current living conditions.

Process leases, contracts, and other assorted forms as appropriate for each program.

Inspect and certify rental units as decent, safe and sanitary.

Provide information to landlords.

Conduct tenant meetings on a regular basis.

Disseminate program information to related agencies and work in conjunction with appropriate agencies to provide assistance to clients.

Process evictions and act as arbitrator between landlord and tenant when necessary.

Preparation and Maintenance of Reports and Records.

Maintain and update waiting lists for all projects.

Maintain files and cross-files on tenants and landlords.

. . .

Wilcox may from time to time direct the work of part-time clerical employee Yaeger when he works in the office but has no other supervisory responsibilities.

Wilcox does not have supervisory responsibilities in sufficient combination and degree to be a supervisor.

If the Union becomes the collective bargaining representative of Authority employees, Wilcox will not have access to confidential information regarding the Employer's strategy or position in collective bargaining, contract administration, litigation or other matters pertaining to labor relations.

Wilcox will not have sufficient access to or involvement in confidential matters relating to labor relations to be a confidential employee.

8. Pat Zager is a full-time clerical employee and holds the position of Section 8 Housing Specialist & Administrator. She is paid \$12.69 per. Her job description describes her duties as follows:

. . .

Receive and fill out applications, verifying all income, assets and allowable deductions.

Meet with administrator and prospective new resident to evaluate their ability to live and function independently. Give tours as required.

Certify eligibility, maintain the application files and proceed in accordance with the tenant selection policies.

Provide orientation for new residents. Greet new residents and review basic information with them, explaining services offered and emergency procedures.

In the selection of tenants, consult with the Executive Director and contact prospective tenants, schedule leasing and offering of apartments.

Review and verify income, assets and expenses, establish rent and security deposit.

Prepare lease and pro-rate rent, collect rent and security deposit, instruct tenants in the upkeep of apartment and requirements for payment of rent, etc., document file accordingly.

At least once every two years, reevaluate each elderly tenant according to current income and asset level and set proper rent.

Set up an appointment schedule which involves interviews, verification of all income and assets and medical expenses, preparing a new lease and notification to tenants of their rent adjustment.

Use the same procedure for family tenants except reexamine them at least once a year, make interim rent adjustments if there is a decided increase or decrease in a tenant's income.

Comply with federal regulations regarding eligibility, evictions, leasing requirements, etc.

Prepare occupancy reports as required by HUD and be responsible for HUD Occupancy Audit, responsible for satisfying HUD of compliance to errors or omissions which might be found in audit.

#### Resident Services and Relations Tasks

At hi-rises for the elderly will schedule time at each building on a regular basis to:

assist with check cashing, errands, etc. on an emergency (one time) basis, renew libraries from time to time as required.

Establish recreation programs for the youth, supervise and/or carry out program; special activities at certain times of the year; responsibility for changing the scheduled recreation program to coincide with the youth school schedule.

Keep in touch with residents and their families when residents are in the hospital.

Maintain liaison with social service and other local agencies for the ongoing benefit of these agencies, the Housing Authority and the tenants being serviced by all.

Visit incapacitated or ill residents in their apartments.

Monitor health (physical and emotional) status of residents and consult with family, administrator, staff personal physician as appropriate.

Maintain effective communication with ALL residents to identify their social and recreational needs and interests.

Monitor resident satisfaction and program effectiveness. Provide support when needed.



Promote and assist tenants in organizing their activities and programs, arrange for social and educational programs whenever possible.

Assist tenants with Homestead Tax Relief, nutrition programs, minibuss service, etc., strive to maintain good rapport with tenants and among tenants.

Refer tenants to resource agencies when appropriate, in special cases, after consultation with the Executive Director, contact social services for assistance.

Contact police, fire department, rescue squad, doctor, coroner, family, etc., in emergency situations.

#### Maintenance Tasks

Share house and apartment inspection duties with Executive Director, inspect family units twice a year to see that all appliances are clean and in working order, check for needed painting, check for any damages, check general housekeeping practices, proper use of appliances, and the manner in which the outside area is maintained (family units), inspect elderly apartments with same criteria at least once a year.

Write up work orders for necessary repairs, discuss items of concern with tenant, schedule a follow-up inspection if necessary or prudent.

#### Management of Manpower and Other Resources Tasks

At Executive Director's direction and request make individual contacts with certain tenants for specific purposes.

Assist Executive Director in contacting tenants regarding late or delinquent rentals.

#### General Administrative Tasks

Prepare news bulletins and distribute.

Work in direct assistance to the Executive Director.

In the absence of the Executive Director, assume such necessary administrative responsibilities as are necessary for the safe and efficient operation of the project with the Board of Commissioners as consultants.

Act as liaison between staff, tenants, and the Executive Director.

Advise the Executive Director when review and change regarding occupancy is needed.

Assist low-income families and individuals, elderly and disabled persons to locate appropriate housing.

Prepare and keep current a list of available housing units.

Respond to requests for information about housing programs available.

Provide information to residents about the various programs and services, such as: the CDBG housing rehabilitation program, the Section 8 Rent Assistance program, and the public housing program.

Provide credit counseling, budgeting and budget management achieving financial stability.

Assist landlords and tenants in resolving disputes regarding such issues as poor housekeeping, delinquent rent, security deposits, etc., and make referrals to appropriate agencies for legal information and advice.

Refer clients to appropriate human service agencies for assistance in solving problems/meeting needs other than those related to housing.

Prepare a contact sheet on all counseling contacts and incorporate the contact sheet information into a monthly report.

Make appropriate referrals to Community Agencies when needed.

Maintain accurate statistical recording system of residents, activities and submit monthly statistical report to Manager.

Assume other administrative tasks upon the direction of the Executive Director.

Transportation services – coordinate rides for medical, errand, social needs, working with volunteers.

Photograph events of interest. Photos of new residents.

Promote volunteerism – optimal participation.

Provide regular educational programs to make residents aware of fire and other emergency procedures.

From time to time accept responsibilities not listed herein.

. . .

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

### **CONCLUSIONS OF LAW**

1. A bargaining unit consisting of the maintenance employees of Rice Lake Housing Authority is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. A bargaining unit of all regular full-time and regular part-time employees of the Rice Lake Housing Authority, excluding confidential, supervisory, managerial and executive employees is an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. A question concerning representation within the meaning of Sec. 111.70(4)(d)3, Stats, exists within the bargaining unit described in Conclusion of Law 2.

4. Mike Ronning, Maintenance Supervisor, is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., but is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

5. Debbie Wilcox, Housing Manager Secretary, is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and is not a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., but is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

### **DIRECTION OF ELECTION**

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this Direction in a

collective bargaining unit consisting of all regular full-time and regular part-time employees of the Rice Lake Housing Authority, excluding confidential, supervisory, managerial and executive employees, who were employed on February 27, 2001, except such employees as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining whether a majority of the employees voting desire to be represented by the General Teamsters Union Local 662, International Brotherhood of Teamsters, AFL-CIO, for the purpose of collective bargaining with the Rice Lake Housing Authority on issues of wages, hours and conditions of employment, or not to be so represented.

Given under our hands and seal in the City of Madison this 27<sup>th</sup> day of February, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

RICE LAKE HOUSING AUTHORITY

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

**POSITIONS OF THE PARTIES**

**The Union**

**Appropriate Unit**

The Commission considers the following factors when determining whether a bargaining unit is appropriate:

1. Whether the employees in the unit sought share a “community of interest” distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether employees in the unit sought share separate or common supervision with all other employees.
5. The degree to which the employees in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

Applying these factors to the case at hand shows clearly that the appropriate unit is one comprised of the full and part-time maintenance employees, Ronning, Huehn and Yeager.

The maintenance employees share a different community of interest from the office employees. Community of interest is a “means of assessing whether the employees participate in a shared purpose through their employment.” NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 11602-A (WERC, 11/95). The maintenance employees are responsible for the physical upkeep of the housing units and are primarily physical laborers, which is distinct from the activities of the office workers who are involved with processing paperwork, maintaining files and speaking on the telephone. Yeager, as a part-time office worker, is the only employee who has any overlap with the clerical staff because the skills and duties of the maintenance workers are so dissimilar from those of the office staff. The maintenance workers also work in a different area than the clerical workers. The office staff is indoors in central

offices, whereas the maintenance workers move from building to building and spend a great deal of time outdoors. Ronning has an office in Marshall Towers from which he does his ordering, but very little of his time is spent there. For the foregoing reasons, the appropriate bargaining unit is one consisting of all full-time and part-time maintenance workers employed by the Rice Lake Housing Authority.

#### Supervisory Status of Maintenance Supervisor

The Union asserts that the position of Maintenance Supervisor does not meet the criteria for a supervisory position established in EVANSVILLE COMMUNITY SCHOOL DISTRICT, DEC. NO. 16127-B (WERC, 8/98) in sufficient combination or degree to qualify for supervisory status. The incumbent, Mike Ronning, answered an ad for the position in November, 1994. The position advertised was maintenance custodial and the notice said nothing about supervisory duties. Further, Ronning was not told at his interview that the position was supervisory, nor has he ever been told so since. Had management intended the position to be supervisory, this would no doubt have been pointed out.

Ronning has no authority to hire, promote or discharge employees or effectively recommend the same. This is a key element in a supervisory position. Maintenance employee Eric Yeager was hired in 1998, but Ronning had no role in the process. He has never promoted an employee, recommended a promotion or been asked for his opinion on the subject. He has never discharged or effectively recommended the discharge of an employee. The lack of these basic powers contradicts any assertion of supervisory status.

Ronning has never authorized or recommended a pay raise for another employee. His own pay raises have been issued by the Executive Director, Sam Rust. The Housing Authority attempted to show that its discretion regarding raises is restricted by HUD regulations, but, in fact, HUD merely establishes a base which must be observed; it does not preclude the Housing Authority from granting raises above the base, as was shown in that Rust informed the Housing Authority Board that they could approve raises. In fact, Ronning has been the beneficiary of this discretion, but cannot exercise it himself.

Ronning does not discipline other employees. He has never exercised such authority or recommended discipline of another employee. The only evidence to contradict Ronning's testimony was Assistant Director Janice Olson's recollection of Ronning "scolding" employee Bill Huehn on one occasion and Rust's hearsay testimony that residents had reported such occurrences to him. Ronning denied these assertions. The Housing Authority's evidence is incredible and should be disregarded.

Ronning has no independent authority to direct or assign the workforce. Maintenance tasks are of three types: regularly scheduled duties, work orders and specially assigned tasks. Ronning works primarily at Red Cedar Village and Marshall Towers and Huehn works

primarily at Riverside Arms. They divide responsibilities at the other units. Work orders are placed in a box for the Maintenance Department, which, again, Ronning and Huehn divide between them. They work on special projects together. Both receive direction from Rust from time to time, but Ronning's direction of Huehn's activities does not go beyond telling him what things they need to accomplish on a given day. The Housing Authority could not offer any specific evidence to contradict this point, other than Olson's recollection of Ronning telling Yeager on one occasion to clean the entry of a building prior to a Board of Directors meeting. This was an anomaly, as Yeager usually works at Whitetail Ridge, a unit for which Ronning has little or no responsibility, and the two rarely even see each other. Under OZAUKEE COUNTY, DEC. NO. 22667-F (WERC, 1/99), such an infrequent occurrence does not establish supervisory authority. Ronning does not develop projects or direct their completion. When he does issue directions, it is only to pass them on from Rust.

Ronning earns \$10.50 per hour, whereas Huehn earns \$10.00. This difference is based on the fact that Ronning has additional responsibility for ordering supplies. His responsibility for ordering supplies is also limited to \$200, otherwise expenditures must be cleared by Rust. Ronning's ordering responsibilities also account for his being given an office. Neither the higher wage nor the office are indicative of supervisory status, but only of the Maintenance Supervisor's role in ordering supplies and need for a space from which to do it.

Ronning has no authority to authorize overtime. The normal workday for maintenance employees ends at 4:00 p.m. Whenever it has been required that someone stay past 4:00, Rust has made the decision and passed it on to Ronning. Occasionally, it is necessary for maintenance employees to come in early to shovel snow from the walks and driveways. Again, Rust has given standing orders about this and both Ronning and Huehn come in on those occasions. Ronning's reminders to Huehn to come in during storms are no more than referrals of Rust's instructions and indicate no exercise of independent authority on Ronning's part.

It is also not significant that Ronning has the use of a Housing Authority vehicle. He testified that he is permitted to use the Housing Authority's pickup truck to drive home for lunch, which the Employer characterizes as a "perk." The other employees receive a \$30.00 per month mileage allowance, however, for use of their personal vehicles, which Ronning does not. He receives no greater benefit than the other employees, therefore, and cannot be considered a supervisor on this basis.

The fact that Ronning signs Huehn's leave requests does not make him a supervisor. He has been signing Huehn's sick leave and vacation requests since late 1999, but the signatures do not constitute approval. The requests are then sent on to Rust, who ultimately makes the decision on granting them. It is also significant that Ronning does not sign the requests of the other maintenance employee, Eric Yeager. This is clearly not a supervisory function, but even if it were, standing alone it would not elevate him to the status of a supervisor under the ruling in CITY OF MAUSTON, DEC. NO. 21424-E (WERC, 11/93).

The Housing Authority produced a job description for a Maintenance Supervisor/Lead Worker, which supposedly applies to Ronning. Ronning testified, however, that he had never heard of, much less seen, such a job description. The description lists a number of duties which Ronning testified he has never performed. He has never supervised, scheduled or assigned daily duties of maintenance personnel. He does not determine the priority of projects, but collaborates with Huehn. He has no role in the budget process and has never interviewed contractors hired to perform work for the Housing Authority. Under CITY OF MAUSTON, SUPRA, the employee's actual duties are a better gauge of his status than his job description and Ronning's duties clearly are not supervisory.

The Housing Authority contends that Ronning has supervisory authority over two groups of temporary employees, PIC workers and Green Thumb workers. Ronning testified, however, that he has no such authority. Furthermore, neither group qualify as employees of the Housing Authority. PIC (Private Industry Council) workers are youth from low income families who are provided jobs by the Private Industry Council. Green Thumb workers are people over the age of 55 who work through a government agency to provide assistance to different groups. Neither group of workers is paid by the Housing Authority and they are, therefore, not employees of the Housing Authority. As such, any supervisory authority Ronning has in regard to them is irrelevant. See MENOMINEE COUNTY, DEC. NO 26983-B (WERC, 4/95).

### **The Housing Authority**

#### **Appropriate Unit**

Eric Yeager should be included in the bargaining unit. He is a full-time employee who spends half his time in maintenance work. The WERC has held that part-time employees should be included in the unit where they share a community of interest with the other employees. WAUKESHA DISTRICT 8 AREA BOARD OF VOCATIONAL, TECHNICAL AND ADULT EDUCATION, DEC. NO. 11076 (WERC, 6/72). Yeager performs the same maintenance functions as Huehn and both are supervised by Ronning. Yeager is a regular employee and should be considered an appropriate member of the unit even though he is not a full-time maintenance worker. KEWAUNEE COUNTY, DEC. NO. 13185-E (WERC, 3/88); PITTSVILLE SCHOOL DISTRICT, DEC. NO. 21806 (WERC, 6/84).

Further, inasmuch as the maintenance employees are not craftsmen, the unit is not a craft unit and the clerical employees should be included in the unit. A craft employee is, by definition, a skilled journeyman craftsperson and must have a substantial period of apprenticeship or comparable training. Were the maintenance employees craft employees, it would be appropriate to include them in a separate unit, but they are not. In such cases, the WERC tries to avoid undue fragmentation and seeks to include all employees who share a community of interest in the same unit. The Housing Authority has only four qualified



employees – one full-time maintenance, one part-time maintenance/part-time clerical, and two full-time clerical. In CITY OF CORNELL (ELECTRIC UTILITY), DEC. NO. 24028 AND 24029 (WERC, 10/86), the Commission applied this principle to find that clerical workers were properly included in a unit with other non-craft, non-sworn employees. In this case, all the employees share similar wages, hours and conditions of employment. There is no valid reason to segregate them and all should be included in the bargaining unit.

### Supervisory Status of Maintenance Supervisor

The Municipal Employment Relations Act (MERA) excludes supervisors from the definition of a municipal employee. That statute, and the case law interpreting it, establish criteria for determining whether an employee is a supervisor. CITY FIREFIGHTERS UNION LOCAL NO. 311 V. CITY OF MADISON, 48 WIS. 2D 262, 270-71, (1970). If the factors are sufficient in number, an employee will be found to be a supervisor. This is so regardless of how frequently or infrequently the supervisory authority is exercised, even if a majority of the employee's time is spent in non-supervisory activities.

The Maintenance Supervisor position was created in 1994, at the time one of the two maintenance workers employed by the Housing Authority departed. Previously, there had been two co-equal workers who were both supervised by Executive Director Sam Rust. Rust then decided to create the Maintenance Supervisor position and hired Mike Ronning to fill it. The testimony of Rust and Board member Walt Zimmer establish that the position was always intended to be supervisory. Rust made it clear to Ronning that the position would be supervisory and it was for this reason that Ronning was paid more than the incumbent maintenance employee, Bill Huehn. Assistant Director Janice Olson also testified that Ronning was hired because it was felt that Huehn would not want the responsibility of the Supervisor position. Olson further testified that Huehn views himself as subordinate to Ronning.

The organizational flowchart for the Housing Authority (Employer Exhibit 1) indicates that Ronning's position is supervisory. This chart was created by Ram Enterprises, the agency that handles the Housing Authority's federal accounting in order to comply with HUD regulations. Ram made this determination from its examination of the Employer's budget and payroll records. The chart lists Ronning as Maintenance Supervisor. He reports directly to the Executive Director, whereas the other maintenance employees report to him. Ronning's job description is also replete with references to his supervisory responsibilities and his actual duties meet the WERC's criteria for a supervisory status.

Ronning's job description indicates he has responsibilities in the hire of new employees. The Housing Authority has only hired one new maintenance worker, Eric Yeager, during Ronning's tenure, and he works primarily at a facility not within Ronning's responsibility, therefore, he was not involved in Yeager's hire. When Yeager works in the other buildings, however, Ronning does act as his supervisor. Ronning has disciplined employees, having been overheard by Assistant Director Olson reprimanding Bill Huehn, and he oversees the work of Green Thumb and PIC workers who are assigned to the Housing Authority from time to time.

Ronning's job description authorizes him to assign and direct the work of the other maintenance employees and the record reveals that he does in fact fulfill these roles. Both Rust and Olson have observed Ronning giving instructions to Bill Huehn and Ronning keeps the records as to what has been accomplished and what needs to be done. Ronning also trains Huehn and Yeager on proper work methodologies and new equipment. Huehn, although an employee for a longer time, never gives instructions to Ronning. Ronning doesn't have responsibilities at Whitetail Ridge, where Yeager primarily works, but when Yeager is at the other facilities, Ronning supervises him. On the other hand, Yeager does not give instructions to Ronning. The record makes it clear that Rust has removed himself from the maintenance area and leaves that up to Ronning.

Ronning has complete authority to assign overtime. When work, such as snow plowing is required outside of normal work hours, it is Ronning, not Rust, who makes the determination and calls in the extra help. Rust testified that Ronning has complete discretion to call in Huehn or Yeager, or assign himself, as needed to work beyond the normal schedule. Rust notifies Ronning if overtime is needed for some reason, but it is Ronning who handles the assignment. Rust directs Ronning to carry out certain tasks, but it is Ronning who determines when and how and by whom they will be done.

There is no level of supervision between Ronning and Rust, nor is there any between Ronning and the subordinate employees. The organizational flowchart clearly shows that Huehn and Yeager report to Ronning. The job description makes it clear that Ronning's function is to receive instructions from management and then have those instructions carried out by Huehn and Yeager. They report to Ronning, not to Rust.

Ronning's rate of pay also supports his supervisory status. Huehn has worked for the Housing Authority more than twice as long as Ronning, yet Ronning is paid \$10.50 per hour and Huehn is paid only \$10.00. Yeager is paid \$7.50 per hour for general labor and \$9.44 per hour when painting. HUD sets the base rates for employee wages, but the Housing Authority may determine to pay more. HUD also establishes minimum increase levels, but allows greater increases if justified by job responsibilities, which explains Ronning's greater wage rate. Ronning also receives extra "perks," which the other employees do not. He is given an office, from where he orders supplies and equipment and has authority to buy certain items as needed. Huehn and Yeager have no authority to order equipment and supplies nor do they have their own offices. Ronning has input into the preparation of the budget, in that Rust consults him in the need for major acquisitions. Ronning is also given the use of a Housing Authority truck, which the other employees are not.

Ronning approves Huehn's requests for sick leave and vacation and must sign the requests before they are forwarded to Rust. When Huehn calls in for sick leave, it is Ronning, not Rust, who is notified. Ronning has attended Board meetings as a management representative, which the other employees have not, and it is he who the office staff contact with any questions about employees' hours or work schedules.

The Employer concedes that Ronning spends a great deal of his time working alongside Huehn and Yeager, but this doesn't automatically disqualify him as a supervisor. If supervisory criteria exist in sufficient number and degree, supervisory status may be found even where a majority of time is spent in non-supervisory tasks. SHAWANO COUNTY, DEC. NO. 7194-A (WERC, 10/84). This is true even if not all seven criteria are present. TAYLOR COUNTY, DEC. NO. 27360 (WERC, 8/92).

The record establishes that Ronning has independent authority to supervise the maintenance employees, Green Thumb workers and PIC workers. He can approve leave requests, authorize overtime, change work schedules, issue discipline and order equipment and supplies without consulting Rust. He is the sole level of authority between the Executive Director and the other employees. Clearly, he is a supervisor.

Other cases support this conclusion. In numerous cases, Head Custodians were found to be supervisors. SCHOOL DISTRICT OF MONTELLLO, DEC. NO. 17829-B (WERC, 2/82); SOMERSET SCHOOL DISTRICT, DEC. NO. 24968-A (WERC, 3/88); NORTHWOOD SCHOOL DISTRICT, DEC. NO. 20022 (WERC, 10/82). While much time was spent in custodial duties, the Commission found supervisory status because the employees exhibited many, if not all, of the criteria listed above. In the recent case of WHITEHALL SCHOOL DISTRICT, DEC. NO. 29286-B (WERC, 7/99), supervisory status was found even though only two employees were supervised. There, although the supervisor also performed maintenance duties, the Commission found that his authority to approve leave, authorize overtime and schedule substitutes, justified a finding of supervisory status and that he had authority to adjust grievances, recommend layoffs and issue discipline even though he had not yet performed those tasks.

TREMPEALEAU COUNTY (HOUSING AUTHORITY), DEC. NO. 23469 (WERC, 3/86), wherein a Maintenance Worker II was found not to be a supervisor, can be distinguished. In that case, the employee was the sole full-time maintenance employee. The other employees, two part-time workers and a summer lawn care employee, were supervised only as to their tasks, not their conditions of employment. He could not promote, transfer, discipline or discharge. Further, the workers only performed maintenance, not custodial functions. Here, the workers perform custodial and maintenance duties and Ronning has authority over many aspects of their employment, even though he has not had occasion to exercise his authority in all areas.

### **The Union's Reply**

#### **Appropriate Unit**

The most appropriate bargaining unit is comprised of the maintenance employees. The Employer argues that all the non-supervisory employees share similar wages, hours and conditions of employment, but this is unsubstantiated. The only evidence on this point

adduced at the hearing relates to Ronning, Huehn and Yeager and there is no evidence whatsoever regarding the wages, hours and conditions of employment of the office workers. The maintenance workers have separate and distinct duties and a separate community of interest from the office staff and are appropriately placed in a separate unit. Further, the evidence indicates that office worker Debbie Wilcox may be a supervisory or confidential employee, making her ineligible to vote in any event.

#### Supervisory Status of Maintenance Supervisor

The Housing Authority relies heavily on Ronning's job description and the opinions of Rust, Olson and Zimmer in arguing that Ronning is a supervisor. The relevant inquiry, however, is whether Ronning does in fact have the authority to exercise supervisory duties. Ronning's testimony establishes that he does not have such authority and is not a supervisor under Sec. 111.70(1)(o)1, Stats.

The subjective opinions of others as to Ronning's hire status are not dispositive as to whether he is a supervisor under MERA. Rather, he must actually possess supervisory authority. Further, the Employer's characterization of Ronning's hire status is not accurate. The ad for Ronning's position said nothing about supervisory responsibilities. Further, Ronning testifies that nothing was said about supervisory duties during his interview, and Rust admitted that he could not recall whether the subject was discussed. Further, Olson's recall of her conversation with Huehn about Ronning's status was equivocal and does not support a finding that Ronning was hired to be a supervisor. Zimmer, also, was unable to testify that Ronning was hired to be a supervisor.

The Employer relies heavily on the duties outlined in Ronning's job description, but the Employer must also show that Ronning actually has the authority claimed. This it failed to do. Ronning has never hired or recommended the hire of another employee, even though the Employer has hired another maintenance worker, Eric Yeager, since Ronning has been there. The Employer explains this by claiming that Yeager works in another building separate from Ronning, yet it also claims that Ronning is Yeager's supervisor. This contradiction points up the weakness in the Employer's argument. Ronning did not interview Yeager, as the Employer claims and, at best, was introduced to him when he was hired. "Job descriptions may well be helpful in the determination of employment duties, but of greater weight in determining supervisory status, are actual duties performed." CITY OF MAUSTON, SUPRA.

Ronning also has no authority to discipline or discharge employees. Assistant Director Olson has a vague recollection of Ronning issuing an alleged verbal reprimand to Bill Huehn, as well as to some Green Thumb workers. Ronning testified that he has never issued a reprimand and the Employer provided no documentation to substantiate its claim. As non-employees, any reprimand Ronning may have given to Green Thumb workers is irrelevant to his supervisory status.

Ronning does not direct daily work or authorize overtime. Ronning and Huehn have regular daily duties at separate buildings for which they are each responsible. When work orders for specific projects are received from the administrative offices, they are not designated and Ronning and Huehn each divide them up. When Ronning and Huehn work together on a project, Ronning does not oversee Huehn's work or give him instructions. His only direction would be to tell Huehn what project needs to be done on a given day. If anything, this constitutes direction of an activity, not an employee. Ronning only schedules overtime when directed to do so by Rust, except in the case of snow removal. At those times both Ronning and Huehn know the work must be done outside normal hours and coordinate their schedules. This is not the same as directing Huehn to work overtime, as the Employer characterizes it. The Employer notes that on one occasion Ronning scheduled himself to work late to unload a shipment. It must be noted, however, that he only did so because he was so instructed by Rust, and did not act on his own authority.

The evidence indicates that Ronning does not meet the statutory definition of a supervisor. Ronning is a municipal employee and should be eligible to vote on representation.

### **The Housing Authority's Reply**

#### **Appropriate Unit**

The Union argues that there is no community of interest between the maintenance workers and the office workers and, therefore, the maintenance workers should appropriately be in a separate unit. Yet, Eric Yeager is a part-time maintenance and part-time office employee, clearly demonstrating that there is significant overlap and community of interest between the two groups. Further, the Union fails to consider that "wall to wall" bargaining units comprised of employees from several different areas are common throughout the State. Such a unit is no less appropriate here. Finally, where, as here, there are so few employees, dividing the units would result in undue fragmentation, an end which the WERC has traditionally tried to avoid. CITY OF CORNELL (ELECTRIC UTILITY), SUPRA. There is no reason to separate the units here and, therefore, Bill Huehn and Eric Yeager, along with Debbie Wilcox and Pat Zager, should be entitled to vote.

#### **Supervisory Status of Maintenance Supervisor**

The Union asserts that Ronning does not have input into hiring decisions, but it must be noted that only one maintenance employee, Eric Yeager, has been hired since Ronning has worked for the Housing Authority. Further, Ronning was not involved in that decision because Yeager was hired to work primarily at Whitetail Ridge, a facility outside Ronning's area of responsibility. When Yeager is working at the other buildings, however, Ronning is his supervisor. Because it is a small department, there are limited opportunities for promotion

or transfer, and another new hire is unlikely anytime soon. Nevertheless, the fact that Ronning has not had the opportunity to exercise this authority does not mean that it does not exist.

This is also true that Ronning has never discharged an employee. The circumstances have not arisen where such a decision has been required, but that is not the same as lack of authority. Further, in WHITEHALL SCHOOL DISTRICT, SUPRA, the Commission found supervisory status where a supervisor had not had occasion to exercise his authority due to the infrequency of occurrences and the short term of his employment. Assistant Director Olson did testify to overhearing Ronning issue a verbal reprimand to Bill Huehn, however.

Ronning has authority to direct and assign the workforce. The record shows that he does a schedule and assigns daily duties to maintenance workers, determines priority of projects, has assigned work to Bill Huehn, has trained Huehn and Eric Yeager regarding work methods and new equipment, and has authorized overtime for both Huehn and Yeager. Outside Whitetail Ridge, Ronning is Yeager's supervisor and admitted directing him to clean a building entryway prior to a Board meeting.

The Union contends that the Executive Director is the only supervisor, which is a narrow and erroneous construction of supervisory status because it fails to recognize that there are intermediate levels of supervision. Rust directs the Housing Authority, but delegates the maintenance work to Ronning. Thus, Ronning answers to Rust, but Huehn and Yeager, in turn, answer to Ronning. The fact that Ronning is subordinate to Rust does not mean he is not a supervisor. Ronning has supervisory responsibilities within the meaning of the statute and is, therefore, a supervisor. In this regard, the fact that Ronning supervises Green Thumb and PIC workers should also be taken into account. Supervising non-employees, by itself, does not indicate supervisory status, but it is relevant when other supervisory indicia are present. NORTHWOOD SCHOOL DISTRICT, SUPRA.

## **DISCUSSION**

### **Appropriate Unit**

Section 111.70(4)(d)2.a. Stats., provides, in part, as follows:

The commission shall determine the appropriate collective bargaining unit for the purpose of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the municipal employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a collective bargaining unit.

When determining whether a proposed unit is appropriate, we consider the facts presented by the parties as measured against the statutory language of Sec. 111.70(4)(d)2.a., Stats. and the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the units sought as compared to the wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.
5. The degree to which the employees in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. ARROWHEAD UNITED TEACHERS V. WERC, 116 WIS. 2D 580 (1984); BENTON SCHOOL DISTRICT, DEC. NO. 24147 (WERC, 12/86); BOYCEVILLE COMMUNITY SCHOOL DISTRICT, DEC. NO. 20598 (WERC, 4/83).

We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase "community of interest" as a means of determining whether employees share similar interests, usually — though not necessarily — limited to those interests reflected in Factors 2 - 5. This definitional duality is of long standing, and has received the approval of the Wisconsin Supreme Court. ARROWHEAD UNITED TEACHERS V. WERC, SUPRA.

Factor 6 reflects our statutory obligation under Sec. 111.70(4)(d)2.a., Stats., to "avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal workforce."

Factor 7 — bargaining history — involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91).

Based upon long-standing Commission precedent, it is well established that within the unique factual context of each case, not all criteria deserve the same weight 1/ and thus a single criterion or a combination of criteria listed above may be determinative. 2/ Consequently, the Commission gives effect to the aforesaid statutory provision by employing a case-by-case analysis 3/ “to avoid the creation of more bargaining units than is necessary to properly reflect the employees' community of interest.” 4/

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1/ *SHAWANO-GRESHAM SCHOOL DISTRICT, DEC. NO. 21265 (WERC, 12/83); GREEN COUNTY, DEC. NO. 21453 (WERC, 2/84); MARINETTE COUNTY, DEC. NO. 26675 (WERC, 11/90).*

2/ *Common purpose, MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NOS. 20836-A and 21200 (WERC 11/83); similar interests, MARINETTE SCHOOL DISTRICT, SUPRA; fragmentation, COLUMBUS SCHOOL DISTRICT, DEC. NO. 17259 (WERC, 9/79); bargaining history, LODI JOINT SCHOOL DISTRICT, DEC. NO. 16667 (WERC, 11/78).*

3/ *APPLETON AREA SCHOOL DISTRICT, DEC. NO. 18203 (WERC, 11/80).*

4/ *AREA BOARD OF VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT NO. 1, DEC. NO. 11901 (WERC, 5/73).*

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Importantly, the question before us is not whether the unit sought is *the most* appropriate unit, but rather whether it is *an* appropriate unit. 5/

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5/ *OCONTO SCHOOL DISTRICT, DEC. NOS. 29295-29296 (WERC, 1/98); MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91).*

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The Union asserts that a bargaining unit consisting of the three full-time and part-time maintenance employees is “an appropriate unit.” We conclude otherwise.

As to Factor 1, there is a “community of interest” among all the employees in the sense that they share the common purpose of furthering the general mission of the Housing Authority.

As to Factor 2, the maintenance employees have distinctive duties and skills. The maintenance employees provide the physical labor and skills necessary to sustain the Housing Authority’s physical plant. The clerical employees are office workers who perform multiple tasks that do not require physical labor.



Turning to Factor 3, the wages, hours and working conditions of the maintenance employees are quite similar to those of the clerical employees. While there is some variation in wages and work hours, all employees receive identical fringe benefits.

As to Factor 4, the Housing Authority staff is under the overall day to day supervision of the Executive Director, Sam Rust. While the clerical employees are also supervised by the Assistant Director, the small number of employees persuades us that the Executive Director has direct supervisory oversight over all employees.

Looking at Factor 5, the maintenance employees have a distinctive worksite. The Housing Authority's administrative offices are located at Marshall Towers and the clerical staff are situated there. The Maintenance Supervisor also has an office at Marshall Towers, which he uses for the ordering and record keeping functions of the maintenance department. The great majority of the time, however, the maintenance employees are working either outdoors or in the residential units and they primarily come to the office complex only to receive messages and work orders.

As to Factor 6, it must be noted that the entire staff of the Housing Authority, excluding management and supervisory personnel, is at most five employees. With a workforce of this size, a serious question is raised as to whether a bargaining unit of maintenance employees (and thus, the future possibility of a second clerical employee unit) is consistent with the anti-fragmentation directive in Sec. 111.70(4)(d)2.a., Stats.

Factor 7 — bargaining history — strongly supports a conclusion that a maintenance employee bargaining unit is not appropriate. The testimony of the Executive Director, as well as the stipulation of facts submitted by the parties, indicates that historically the Housing Authority has dealt with all employees as a group when establishing wages and benefits, and applies the same percentage increases to all classifications.

Reviewing the foregoing, only Factors 2 and 5 support the appropriateness of a maintenance employee bargaining unit. Factors 1, 3, 4, 6 and 7 strongly support a conclusion that such a unit is not appropriate and we so conclude.

However, in the alternative, the Union has indicated an interest in seeking to represent employees a “wall-to-wall” bargaining unit of all Authority employees and we have directed an election in this appropriate unit.

### Supervisory Status

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, lay off, 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.

Under that statute, the Commission considers the following factors in determining if the occupant of a position is a supervisor:

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 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-quoted factors need to reflect supervisory status. Our task is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an individual to be a supervisor. CITY OF TWO RIVERS (POLICE DEPT.), Dec. No. 21959-A (WERC, 2/91).

The Employer contends that the factors set forth above exist in sufficient combination and degree to qualify the Maintenance Supervisor as a supervisor. We disagree.

The job description for the Maintenance Supervisor indicates that the employee is to assist in hiring other maintenance and custodial personnel. Ronning testified that he had not seen the job description, nor had he ever been informed that he had a role in the hiring

process. Since Mike Ronning has been employed as Maintenance Supervisor, only one other maintenance worker, Eric Yeager, has been hired by the Housing Authority. The record reflects that Ronning did not in fact play a significant role in Yeager's hire. Given all of the foregoing, we conclude Ronning does not have the authority to effectively recommend hiring.

Should the occasion arise, Ronning has no role in decisions regarding promotions, raises or transfers for other employees and his job description does not make reference to such duties.

The job description does not list discipline as one of the Maintenance Supervisor's duties, but does list the ability to take disciplinary action as a job qualification. Ronning testified that he has never disciplined other employees, although Assistant Director Janice Olson testified that she overheard Ronning giving what she termed a verbal reprimand to Bill Huehn. We conclude that Ronning's independent disciplinary authority is limited to verbal reprimands and that, in the context of such a small workforce, Executive Director Rust will independently determine the need for and impose more serious discipline.

As to the authority to direct and assign the workforce, Ronning has the authority to prioritize and assign maintenance work to Huehn and Yaeger. However, as a general matter, the work of maintenance employees follows a regular schedule and each employee is responsible for maintenance work in specified buildings. Thus, Ronning does not often exercise independent judgment when exercising this authority. Ronning does sign Huehn's sick leave and vacation requests but does not sign Yaeger's. Executive Director Rust signs all maintenance employee time cards. Rust, not Ronning, generally authorizes overtime although Ronning determines who will work the overtime.

Ronning directs the work of two employees. The Green Thumb and PIC workers who perform maintenance for the Authority are not Authority employees and thus, Ronning's responsibility to direct the work of these individuals is not relevant to his alleged supervisory status. VERNON COUNTY, DEC. NO. 13805-I (WERC, 2/00). Rust exercises supervisory authority over all maintenance employees.

Ronning is paid \$10.50 per hour, whereas Huehn is paid \$10.00 per hour and Yaeger \$7.50 per hour. Ronning's wage rate reflects his maintenance skills, his responsibilities for ordering supplies and his authority to direct the work of the other maintenance employees.

Ronning spends a substantial majority of his time performing maintenance work and very little time supervising the work of the other two maintenance employees. When he does work with another maintenance employee when completing a project, he is supervising the activity more than supervising the employee.

Given all the foregoing, we think it clear that Ronning is a lead worker but not a supervisor. He has no significant role in hiring or discipline, has limited authority to direct the

work of a small number of employees, and spends most of his time performing maintenance work. Thus, Ronning is eligible to vote in the election and is included in the bargaining unit if the employees vote to be represented by the Union.

The Housing Authority has cited our decision in WHITEHALL SCHOOL DISTRICT, SUPRA, in support of its position. However, we are of the view that that case is distinguishable on its facts. In WHITEHALL, we found the school district's Maintenance Supervisor to be a supervisor, notwithstanding that there were only two other employees under his authority. In that case, however, the Maintenance Supervisor's authority and responsibility was far more broad ranging than is the case here. There, the supervisor had significant input into the hiring of new employees, as well as decisions regarding their promotion and transfer. He was responsible for employee time sheets and leave requests and had the independent authority to issue written reprimands. Here, has Ronning has less disciplinary authority, but no role in hiring, no responsibility for employee time sheets, and leave approval authority for only some of the employees he allegedly supervises.

To the contrary, we are of the view that the duties of the Maintenance Supervisor here more closely approximate those of the Maintenance Worker II in TREMPLEAU COUNTY (HOUSING AUTHORITY), SUPRA, also referenced by the Employer. In that case, also involving a small bargaining unit, the employee's limited supervisory authority warranted a conclusion that he was not a supervisor.

In the context of the "wall-to-wall" unit we have found to be appropriate, the Union raises the question whether Housing Manager Secretary Wilcox is a supervisor. Wilcox may occasionally direct the work of Yaeger when he is performing in a clerical capacity. However, that is only evidence is the record that even remotely supports a supervisory status and thus we conclude that Wilcox is not a supervisor.

#### Confidential Status

The Union asserts that Wilcox is a confidential employee.

For an employee to be held confidential, the employee must have sufficient access to, knowledge of or participation in confidential matters relating to labor relations. For information to be confidential in the labor relations context, it must: (a) deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and (b) be information which is not available to the bargaining representative or its agents. DANE COUNTY, DEC. NO. 22796-C (WERC, 9/88).

As to confidential status, the parties have stipulated that Assistant Director Olson will perform all confidential labor relations clerical duties should the Union become the collective bargaining representative of the employees. Thus, Wilcox will not have any confidential responsibilities and is not a confidential employee. Therefore, Wilcox is eligible to vote and is included in the bargaining unit if the employees vote to be represented by the Union.

Dated at Madison, Wisconsin this 27<sup>th</sup> day of February, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner