

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WATERFORD SANITARY DISTRICT NO. 1

Involving Certain Employees of
WATERFORD SANITARY DISTRICT NO. 1

Case 2
No. 59402
ME(u/c)-1023

Decision No. 30214

Appearances:

Weber & Cafferty, S.C., by **Attorney Robert K. Weber**, 2932 Northwestern Avenue, Racine, WI 53404, appearing on behalf of the Waterford Sanitary District No. 1.

Previant, Goldberg, Uelman, Gratz, Miller, Levy & Brueggeman, S.C., by **Attorney Andrea F. Hoeschen**, 1555 North Rivercenter Drive, Milwaukee, WI 53212, appearing on behalf of Teamsters Local No. 43.

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

On November 21, 2000, Waterford Sanitary District No. 1 filed with the Commission a petition seeking the clarification of an existing bargaining unit represented by Teamsters Union Local No. 43, by exclusion of the position of Operations Superintendent because the incumbent is a supervisor and/or a managerial employee.

Daniel Nielsen, a member of the Commission's staff, conducted a hearing in Waterford, Wisconsin, on March 19, 2001, at which time Teamsters Union Local No. 43 opposed the petition, contending that the Operations Superintendent was neither a supervisor nor managerial employee, and thus should remain in the bargaining unit.

Dec. No. 30214

The parties submitted post-hearing briefs, and the record was closed on April 23, 2001.

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

FINDINGS OF FACT

1. Waterford Sanitary District No. 1, hereinafter referred to as either the District or the Employer, is a municipal employer with offices at 415 North Milwaukee Street, Waterford, Wisconsin. At all times material to this matter, the District has been overseen by a three member citizen board of Commissioners. The President of the Commission is Myron Ciesielski. The full-time Clerk-Administrator of the District is Debbie Crawford.

2. Teamsters Union Local No. 43, hereinafter referred to as either the Union or the Teamsters, is a labor organization with offices at 1624 Yout Street, Racine, Wisconsin. Tim Wagner is the President of Local 43.

3. In early 1999, the Teamsters sought voluntary recognition as the exclusive bargaining representative for the District's employees. On April 16, 1999, the District's counsel, Patrick Cafferty, sent a letter to Union President Tim Wagner, extending recognition, with a caveat:

Dear Mr. Wagner:

This is to advise you that I am authorized to state that the Town of Waterford Sanitary District will voluntarily recognize Teamsters, Local 43 as the exclusive bargaining representative of its regular full-time employees.

One caveat I should note is that the Town reserves its right to exclude certain confidential, managerial or supervisory employees at a later time.

Please call if you have any questions.

4. The District and the Teamsters thereafter engaged in bargaining over a first contract for the bargaining unit. In the course of bargaining, the District took the position that the Clerk-Administrator must be excluded from the bargaining unit. It did not raise the question of the Operations Superintendent's status. The Union agreed to exclude the Clerk-Administrator. In February of 2000, the parties signed a collective bargaining agreement, which provided, at Article 1, for the recognition of the Union:

. . .

The Town of Waterford Sanitary District, a Wisconsin municipal corporation, (hereinafter sometimes referred to as “Employer”), and Teamsters Local Union No. 43, (hereinafter sometimes referred to as “Union”), affiliated with the International Brotherhood of Teamsters, as the exclusive collective bargaining representative of all regular full-time employees of the Sanitary District of the Town of Waterford, excluding supervisors, confidential, administrator-clerk and office personnel positions, for the purposes of negotiations with the Town of Waterford Sanitary District or its lawfully authorized representatives, on questions of wages, hours and conditions of employment.

At Article 3, the Agreement set forth the wage rates for the positions covered by the contract, those of Operations Superintendent and Operations Assistant. The pay rates for those positions are:

. . .

	<u>1/1/00</u>	<u>1/1/01</u>	<u>1/1/02</u>
Operations Superintendent	\$21.63	\$22.28	\$22.95
Operations Assistant	\$18.70	\$19.26	\$19.84

. . .

5. Since he was initially hired in March of 1988, Duane Erickson has been the District’s Operations Superintendent. The December, 1992 job description for Operations Superintendent describes his job requirements and duties as:

ADMINISTRATIVE DUTIES

- Develop, organize and direct operation and maintenance procedures for entire sanitary sewer collection system
- Initiate or recommend new or improved practices
- Develop plans and procedures to insure efficient system operations
- Recommend system improvements and additions
- Review and approve budget requests
- Control expenditure of budgeted funds and request approval for major expenditures if required
- Recommend specifications for major equipment and material purchases

OPERATION AND MAINTENANCE

- Regularly inspect operations of collection system, including 20 lift stations and 198 grinder pumps

- Analyze and evaluate operation and maintenance functions
- Inspect all new lateral installations
- Clean sewer mains and pump systems as needed
- Check for inflow and infiltration
- Repair and maintain grinder pumps and lift stations
- Repair and maintain trucks and equipment
- Remain on call after normal working hours for emergency responses
- Organize and direct activities of maintenance personnel including training programs

COMMUNICATIONS

- Maintain effective communications with other employees and the general public
- Maintain open communications with Town Board and Building Inspector and coordinate activities as needed

BUILDING MAINTENANCE

- Repair and maintain Town Hall Building and building operations

RECORD KEEPING

- Record flows and maintenance data
- Prepare operation reports
- Prepare lateral inspection reports

MISCELLANEOUS

- Maintain plumbing inspector's license and attend necessary training sessions
- Maintain wastewater operations certification

6. Since he was initially hired in January of 1994, Jeff Dolezal has been the District's Operations Assistant. The December, 1992 job description for Operations Assistant describes his job requirements and duties as:

ADMINISTRATIVE DUTIES

- Recommend new or improved practices
- Recommend system improvements and additions

OPERATION AND MAINTENANCE

Assist Operations Superintendent with the following:

- Regular inspection of operations of collection system, including 20 lift stations and 198 grinder pumps
- Analysis and evaluation of operation and maintenance functions

- Cleaning sewer mains and pump systems as needed
- Checking for inflow and infiltration
- Repair and maintenance of grinder pumps and lift stations
- Repair and maintenance of trucks and equipment
- Remain on call after normal working hours for emergency responses

COMMUNICATIONS

- Maintain effective communications with other employees and the general public

BUILDING MAINTENANCE

- Assist in repair and maintenance of Town Hall Building and building operations

RECORD KEEPING

- Record flows and maintenance data
- Assist in preparation of operation reports

MISCELLANEOUS

- Optional - Maintain plumbing inspector's license and attend necessary training sessions
- Inspect new lateral installations

7. Erickson participated in the job interview process when Dolezal was hired, including a ranking of candidates, and recommended his hiring to the commissioners. The commissioners took a formal vote to hire Dolezal, and Erickson did not participate in that vote.

8. Prior to the recognition of the Union, Erickson conducted annual performance evaluations of Dolezal. These evaluations included ranking his performance in the specific areas of "Operations and Maintenance," "Communications," "Building Maintenance and Repair," "Record Keeping," "Computer Operations," "Budget and Accounting," "Other" and "Overall Performance." At the end of each performance evaluation, Erickson wrote a narrative statement, providing commentary on Dolezal's performance and recommendations for his pay rate for the coming year. The District Commissioners uniformly accepted his assessment of Dolezal's work. In 1998, he recommended a 5% increase in Dolezal's salary. The commissioners approved a 3% increase. The last of these evaluations was completed on January 10, 1999. Once negotiations commenced for a collective bargaining agreement with specified pay rates, the District discontinued performance evaluations for the Operations Assistant.

9. Erickson and Dolezal discuss the work assignments to be performed during the day and agree on which jobs should be performed and when. Erickson has the authority to change the

work priorities for Dolezal and reassign him if he believes it is warranted. Erickson also has the authority to authorize overtime for Dolezal. Erickson and Dolezal both complete time cards, itemizing their duties during the day, and submit the cards to the Clerk-Administrator. Erickson does not review Dolezal's timecards prior to their submission.

10. Erickson and Dolezal rotate weekend on-call duty, and whoever is on call is responsible for the needed work, including making a judgment as to whether situation constitutes an "emergency" for the purpose of receiving minimum call-in pay under the contract.

11. The normal work week is 40 hours, 7:00 a.m. to 3:00 p.m., Monday through Friday. Dolezal spends the great majority of his time in the field. Erickson spends an average of 16 hours per week on office work and record keeping, and another 3 hours on average conducting inspections. Erickson holds certification in water, wastewater and plumbing inspection. Dolezal does not have the necessary certifications to conduct inspections.

12. Dolezal has never been disciplined. Erickson has the authority to discipline Dolezal. There have been no transfers or layoffs in the District since Dolezal was hired.

13. In March of 2000, District President Ciesielski promulgated a policy requiring that the door between the administrator's office and operations area remain closed at all times. His stated reasons for the policy were that an open door looked unprofessional, and that given the presence of a union, there was a need to keep confidential information from being overheard. In late May, he sent a memo to Clerk-Administrator Crawford for posting, stating that it appeared that his closed door policy was being ignored and cautioning employees that discipline would result if the policy was not followed. The Union filed a policy grievance on behalf of the bargaining unit, and a grievance meeting was conducted on September 18, 2000, with the three commissioners, Union President Tim Wagner, District legal counsel Robert K. Weber and Erickson. There is no evidence of other grievance activity prior to or since the formation of the bargaining unit.

14. Neither Clerk-Administrator Debra Crawford nor the members of the District's Commission play any role in the day-to-day supervision of Dolezal.

15. Since she was initially hired in 1999, Debra Crawford has been the Clerk-Administrator for the District. The December 1992 job description for Clerk-Administrator describes her job requirements and duties as:

ADMINISTRATIVE DUTIES

- Develop, review and administer ordinances, policies and procedures
- Organize and direct activities of office personnel including training programs
- Develop, analyze & evaluate operation and organizational functions
- Review developer's agreements
- Control expenditure of budgeted funds and request approval for major expenditures as required

- Coordinate and administer financing & bond issues
- Initiate or recommend new or improved practices
- Issue connection permits
- Prepare all meeting agendas
- Make recommendations to commissioners as needed
- Design necessary forms and procedures
- Develop and maintain an accurate filing system
- Maintain inventory of necessary office supplies and equipment

COMPUTER OPERATIONS

- Write, revise and maintain computer programs as needed
- Utilize and expand existing computer functions & record keeping
- Coordinate data & generate necessary reports
- Make recommendations regarding hardware & software requirements

BUDGET AND ACCOUNTING

Organize and maintain the following procedures and records:

- Prepare annual budget
- General Ledger & Voucher System
- Payroll
- Special Assessments
- User charge billings
- Accounts receivable & accounts payable

COMMUNICATIONS

- Maintain effective communications and working relationships with employees, government officials and the general public
- Maintain open communications with Town Board and Building Inspector and coordinate activities as needed
- Initiate and respond to all correspondence
- Issue special assessment letters
- Respond to questions and complaints and, if necessary, refer them to the appropriate personnel
- Periodically write newsletters and bulletins for users
- Give proper legal notice of all scheduled meetings

RECORD KEEPING

- Organize and maintain all records
- Take minutes at all meetings and maintain an indexed book of minutes
- Prepare voucher requests and operation reports
- Create and maintain accurate maps of district & service area boundaries and land divisions in the district

MISCELLANEOUS

- Limited responses to system emergencies in absence of Operations Superintendent
- Coordinate usage of meeting room and operation of Town Hall building

16. The District's budget is divided into five categories of expenses: Operations, Maintenance, Administration, Other, and Debt Service. In 2000, "Operations" and "Maintenance" comprised \$386,426 of the total \$610,456 budget, or approximately 63%. Crawford initiates the budget process each year by providing a copy of the prior year's budget to Erickson, and asking for his recommendations as to the "Operations" and "Maintenance" portions of the budget, as well as the continuing education expense portion of the "Administration" portion, and the DNR Replacement Fund costs under "Other." The largest portion of the "Operations" budget is the fee paid to Western Racine County, which processes waste for the District. In 2000, this amounted to \$208,572. Erickson obtains that figure from Western Racine County, but does not have any control over what is charged. The next largest portion of the "Operations" portion is salaries and wages, at \$95,314. Erickson has no control over that figure. Once Erickson has supplied his input, the final budget proposal is prepared in a meeting between Crawford and the District's accountant. In 2000, Erickson participated in this meeting.

17. Erickson is responsible for implementing a long-term maintenance program budget for the District. The original schedule for equipment replacement was developed by outside engineers and auditors prior to the formation of the Sanitary District. Erickson updates the document as necessary and recommends changes in the priorities to meet the District's actual equipment needs. In 2000, Erickson determined that a new mower and trailer should be purchased, and that a truck should be replaced. Neither expenditure was provided for in the long-term maintenance plan. Both expenditures were included in the budget, at a total budgeted cost of \$55,000.

18. When outside contractors are needed to perform maintenance work for the District, Erickson is responsible for preparing the bid specifications and overseeing the bidding process.

19. In 1999, construction was commenced on an addition to the District's offices. Erickson designed the changes to the maintenance garage, but was not involved in the bidding of the work. In June of 1999, District President Ciesielski became concerned that subcontractors were receiving conflicting information about the work and changes that were to be made. He issued a memorandum advising all employees that they were not to directly communicate with the contractors, and should instead go through the Building Committee.

20. Erickson regularly attends meetings of the District's Commission as one of his normal duties, and give monthly reports on operations and maintenance. Dolezal does not attend these meetings. When the budget is considered, Erickson presents the commissioners with an explanation of those portions he is responsible for, and provides any requested information. His recommendations as to budget items have been routinely accepted.

21. Duane Erickson possesses supervisory authority in sufficient combination and degree to be a supervisor.

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

CONCLUSION OF LAW

Duane Erickson, the incumbent Operations Superintendent, is a supervisor within the meaning of Sec. 111.70(l)(o)1, Stats., and, therefore, is not a municipal employee within the meaning of Sec. 111.70(l)(i), Stats.

Based on the above and foregoing Finding of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The Operations Superintendent is hereby excluded from the bargaining unit described in Finding of Fact 4.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of September, 2001.

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

WATERFORD SANITARY DISTRICT NO. 1

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

POSITIONS OF THE PARTIES

The District

This case involves the District's request to clarify the existing two person bargaining unit to exclude the Operations Superintendent, Duane Erickson, on the basis that he is both a supervisor and a managerial employee. The District notes that Erickson was, and will be, involved in hiring decisions concerning the Operations Assistant, and effectively recommended the hiring of Dolezal for that position in 1994. Moreover, Erickson unquestionably has the authority to direct Dolezal in the performance of his daily work. He assigns the work to Dolezal, and changes assignments when he judges that it is appropriate to do so. He has the independent authority to approve or disapprove Dolezal's requests for time off, and to approve or disapprove overtime. He also possesses the authority to impose discipline on Dolezal, although there has never been an occasion to exercise that authority.

As a practical matter, given that the District's citizen commissioners all have full-time jobs and the Clerk-Administrator is not familiar with operations, Erickson is the only person who can supervise Dolezal. He possesses and regularly exercises that authority. Much of his time -- approximately 15 hours per week -- is spent on administration, and a certain amount more on conducting inspections for which he holds appropriate licenses. Relatively little time is spent performing the same work that Dolezal performs. The District also points out that Erickson is paid nearly \$3.00 per hour more than Dolezal, a differential which may be attributed to his significant supervisory and managerial responsibilities for the District. In sum, Erickson possesses sufficient indicia of supervisory status to warrant his exclusion from the bargaining unit.

Turning to the managerial question, the District notes that one of the keystones of managerial status is the authority to commit the employer's resources. Here, Erickson annually evaluates the budget priorities for "Maintenance" and "Operations," and makes effective recommendations as to where and when the District's resources should be expended. Erickson conceded in his testimony that he was the one who made recommendations on capital expenditures and that the commissioners had never failed to accept any of his recommendations. In the year 2000 alone, Erickson made recommendations on \$55,000 in capital expenditures, and those recommendations were accepted without change. That represents nearly 10% of the District overall budget of \$610,456.

The District argues that Erickson is intimately involved with the development of the budget for “Operations” and “Maintenance.” He proposes budget figures, meets with the Clerk-Administrator and the accountant to develop the budget, participates in the Commission’s budget meetings, and administers and tracks the budget during the course of the year. Plainly, he is a managerial employee, and should be excluded from the bargaining unit.

In virtually every respect, this case is on all fours with the Commission’s decision in TOWN OF PEWAUKEE, Dec. No. 20759 (WERC, 6/83), where a Highway Superintendent who worked alongside the crew for much of the day was nonetheless found properly excluded from the bargaining unit, based on a combination of supervisory and managerial functions. That same result should obtain in this case.

The Union

The Union disputes the District’s contention that Erickson is either a supervisor or a managerial employee. Erickson’s supervisory duties are superficial at best. While he sat in on interviews for the Operations Assistant, he had no vote on the final selection. There is no evidence that he has ever disciplined, promoted, or transferred any employee, and his job description does not suggest that he has such authority. Any contention that he has some type of reserved authority to perform these function is merely self-serving speculation by the District. Erickson used to conduct evaluations of Dolezal, but that ceased when the Union obtained recognition. Even when he did conduct those evaluations, there is nothing to prove that his recommendations as to salary were followed. In 1997, for example, he recommended a 5% raise for Dolezal, and the commissioners settled on a 3% increase.

While Erickson has some limited authority to assign and direct the work of the Operations Assistant, in practice the allocation of work is done on a consensus basis in discussions between the two men. He does not review Dolezal’s timecard, which is submitted directly to the Clerk-Administrator, the same as Erickson’s. The allocation of on-call duty is done on a rotational basis, which does not require any discretion, and whichever employee is on-call may make an independent judgment as to whether there is an emergency situation. The one-to-one ratio of supervisors to employees suggested by the District’s position is inconsistent with the usual norms for determining supervisory status, and the Union points out that there are three commissioners who can supervise both Dolezal and Erickson. While the commissioners are not full-time, they have the ability to direct the two men through the Clerk-Administrator. Indeed, there is evidence of Commission President Ciesielski directing the workforce through memos concerning subcontractors and the use of the District’s facilities.

Erickson is paid more than Dolezal, but that is primarily due to the three specialized certifications he holds, none of which Dolezal holds, and the inspection work this allows him to perform. The bulk of his work time is spent on those inspections, and in performance of

bargaining unit work. While he spends a fair amount of time in record keeping and office work, that does not mark him as a supervisor or a manager. Erickson's duties identify him as, at most, a leadworker, and there is not basis for concluding that he is a supervisor.

The Union also disputes the claim that Erickson is a managerial employee. The Union notes that Commission law defines a managerial employee as one who either (1) participates in the formulation, determination and implementation of management policy or (2) possesses the authority to commit the employer's resources. CITY OF RACINE, Dec. No. 24840-A (WERC, 9/97) Erickson does not qualify under either test. There is no evidence whatsoever that Erickson participates in the making of policy. He provides technical information and advice to the commissioners at their regular meetings, but that is the same right to be heard that any member of the public enjoys. Neither does it appear that Erickson is treated as having managerial authority. He was ordered not to communicate with contractors working on the District's building expansion project, and was ordered not to leave the door open between the operations office and the administrative office. Both orders were issued by Ciesielski. Being given direct orders on such minutiae is hardly the hallmark of a managerial employee.

Neither does Erickson possess the authority to commit the employer's resources. His involvement in the budget process is attenuated. He provides information about operations and maintenance to the Clerk-Administrator, who then works with the accountant to prepare the budget. He informs the commissioners when new equipment is needed, but they retain the final authority to purchase that equipment. The long-term purchase projections that the District uses are based on a schedule prepared by an outside engineer without Erickson's involvement. The record reflects that Erickson is a resource and a conduit for information, but has none of the independent authority typical of managerial employees.

DISCUSSION

Supervisory Status

Section 111.70(1)(o)1, Stats., defines a supervisor in pertinent part 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 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 a claim of supervisory status under Sec. 111.70(1)(o)1, Stats., we consider the following factors:

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 alleged supervisor is paid for the employee's skills or for the supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether the employee spends a substantial majority of time supervising other employees; and
7. The amount of independent judgment exercised in the supervision of employees.

MILWAUKEE PUBLIC SCHOOLS, Dec. No. 6595-C (WERC, 5/96)

It is well established that the fact that not all of the factors reflect supervisory status does not prevent a conclusion that an employee is a supervisor. What is instead required is that the employee in question possess a sufficient combination and degree of supervisory authority. CITY OF TWO RIVERS, Dec. No. 21959-A (WERC, 2/91). What constitutes a "sufficient" combination and degree is a judgment based on the totality of the record, and will necessarily vary from case to case. Certain of these factors do not apply to the instant case. Given the size of the workforce and the fact that there are only two job titles in the unit, there has not been an occasion for a transfer or promotion, and thus, neither Erickson, nor anyone else, has exercised that authority. Likewise, there have been no layoffs. There has been one grievance, but it was a class action and was filed after the collective bargaining agreement was in place, so Erickson would have played no role in adjusting it.

As to Factor 1, Erickson did have substantial and effective participation in the hiring of the Operations Assistant Dolezal. Certainly the formal vote to hire him was taken by the District commissioners, as is commonly the case in public sector entities. However, the formalities are not what govern determinations of supervisory status. If an employee has the authority to effectively recommend actions significant personnel to the formal decision maker, that fact indicates the employee possesses supervisory authority.

The record also reflects that Erickson has disciplinary authority over Dolezal.

Strong evidence of Erickson's supervisory status is also found under Factors 2 and 7. It is clear from the record that he possesses the "authority to direct and assign the work force," in that he is the only person who exercises control over Dolezal's work, including changing work assignments and the authorization of overtime, and his decisions in that regard are not reviewed or controlled by any other employee or official of the District and this reflects the exercise of independent judgment. While it is true that he and Dolezal discuss the work that needs to be accomplished and attempt to agree on the content of Dolezal's work day, the ultimate decision lies with Erickson, and he concedes that he has the authority to change Dolezal's priorities if he decides that a change is needed.

As to the Factor 3 ratio of supervisors to employees, a one-to-one ratio is unusual, and in a larger unit, particularly a blue collar unit, it would usually raise some question as to whether the number of claimed supervisors is plausible, relative to the number of employees. Here, however, there are only two workers in this functional area and the ratio is the inevitable result of that very small workforce. The ratio of supervisors to employees criterion was not intended to prevent small employers from having supervisors, and this is reflected by the inclusion of "the number of other persons exercising greater, similar or lesser authority over the same employees" as a factor in applying this test. The Clerk-Administrator and the commissioners are not in a position to supervise Dolezal, and if there is to be a supervisor somewhere in the operations and maintenance function, it must be Erickson.

As to Factor 4, Erickson receives a wage that is 16% more than Dolezal's, or nearly \$3 per hour. By itself, this does not demonstrate supervisory status. Erickson's job is conceded by all parties to be more responsible than Dolezal's, and he is required to maintain a plumbing inspector's license and a wastewater certification and to perform inspection work that is not included among Dolezal's job duties and requirement. Of the 11 duties and requirements in Erickson's job description that are not mirrored in Dolezal's job description, four are directly related to the possession of these additional licenses and certifications. Only one – "Organize and direct activities of maintenance personnel including training programs" – is attributable to any supervisory function. The remaining six differences are more relevant to the argument over managerial status. Thus, while a plausible argument can be made that Erickson's higher rate of pay is in part attributable to his supervisory responsibilities, an equally plausible argument can be made that it is due to his greater skill levels and the administrative tasks he is responsible for.

Turning to the Factor 5 question of whether Erickson primarily supervises an activity or an employee, plainly he is doing both. He is responsible for the activities of maintenance and operations, but those activities are accomplished through his efforts and those of Dolezal. His job description requires him to direct the operations of the sanitary sewer system, and also to direct the activities of the maintenance personnel. He regularly briefs the commissioners on the activities of his department, but he likewise, at least through January of 1999, annually evaluated Dolezal and provided that information and his recommendations to the commissioners.

As to Factor 6, Erickson is a working supervisor, but his other responsibilities, including budgeting, administration and supervision, markedly distinguish his job from Dolezal's. He spends approximately 40% of his time in office work and reports, while Dolezal spends all of his time in performing field work.

Taking the record as a whole, we conclude that Erickson is a supervisor. He has hiring and disciplinary authority and is the only source of day-to-day supervision and direction for the Operations Assistant. Because our conclusion results in his exclusion from the bargaining unit, it is not necessary to reach any conclusions on the issue of managerial status.

Dated at Madison, Wisconsin, this 19th day of September, 2001.

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