

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**TEAMSTERS LOCAL 75**  
Involving Certain Employees of  
**TOWN OF WASHINGTON**

Case 1  
No. 62662  
ME-3932

**Decision No. 30784**

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**Appearances:**

**Jill M. Hartley**, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Local 75.

**Gordon B. Jaeger**, Town Chairperson, P.O. Box 220, Washington Island, Wisconsin 54246, appearing on behalf of the Town of Washington.

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

On August 25, 2003, Teamsters Local 75 filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70 (4)(d), Stats., seeking an election to determine whether certain employees of the Town of Washington wish to be represented by Teamsters for the purposes of collective bargaining.

Hearing on the petition was held on October 15, 2003 by Commission examiner Peter Davis on Washington Island, Wisconsin. During the hearing, the parties agreed that the appropriate bargaining unit within which an election should be conducted would consist of the Town's Public Works Department employees and that Landfill Manager Slayton should be excluded from the bargaining unit as a supervisor. The parties disagreed over whether the Public Works Crew Supervisor should be excluded from the unit as a supervisor.

On November 14, 2003, the Town filed written argument along with an amended job description for the Public Works Crew Supervisor adopted by the Town Board on November 6, 2003.

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On November 18, 2003, the Teamsters filed written argument and on December 17, 2003 submitted a written objection to Commission consideration of the amended job description.

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

### **FINDINGS OF FACT**

1. Teamsters Local 75, herein the Teamsters, is a labor organization having its principal offices in Green Bay, Wisconsin.

2. The Town of Washington, herein the Town, is a municipal employer having its principal offices at Washington Island, Wisconsin.

3. The Town is governed by a Town Board. By a July 23, 2003 motion of the Town Board, the Town Chairperson (a member of the Town Board) presently has overall personnel authority over the Town's seven full-time, two regular part-time employees, and several temporary/casual part-time employees. The Town had a full-time paid Town Administrator whose contract was terminated and who has not been replaced.

The Town has a Public Works Department that consists of three regular full-time Road Crew employees (one of whom is the disputed Public Works Crew Supervisor) and one regular full-time (Landfill Manager Slayton), and two regular part-time Landfill employees.

The Town has a Public Safety Department consisting of two full-time police officers, and several part-time employees and volunteers who serve as firefighters and rescue personnel.

The Town employs a regular full-time Clerk/Treasurer who the parties agree is a confidential employee.

The Town utilizes casual and temporary part-time employees and volunteers to staff an airport, museums and archives.

4. Greg Jensen has been part of the Town Road Crew for the last 25 years and served as the Public Works Crew Supervisor for the last three years. Randy Dvorak and Lee Baxter are the other members of the Road Crew.

The Road Crew maintains the Town's roads and parks. Each Monday, Jensen meets with the Town Chairperson to discuss/decide what work the Road Crew should perform that week. Jensen then divides the work among the Crew. Because the Crew is experienced and the work tends to be routine, Jensen does not exercise substantial independent judgment when dividing the work.

Jensen and Dvorak usually work together if the work project requires two people while Baxter generally works by himself taking care of the parks. Jensen spends a substantial majority of his time performing the same type of work as Dvorak and Baxter.

If Town Crew members want to take vacation or leave work for a doctor's appointment, they tell Jensen, who has the authority to deny approval if work priorities require such action. Crew members may also call the Town Chairperson to advise him that they will be taking time off.

If Town Crew members are sick, they call the Town office and leave a message on the answering machine.

When Jensen became Supervisor he received a \$1.00 per hour raise in pay and use of a Town truck to travel to and from work. Jensen is now paid \$17 per hour and Dvorak and Baxter are paid \$16 per hour.

5. Neither Dvorak nor Baxter has been disciplined since Jensen became supervisor. Jensen has independent disciplinary authority to discipline Dvorak and Baxter up to and including suspension without pay.

6. No full-time Road Crew employees have been hired since Jensen became Supervisor. If a full-time employee was hired, Jensen would have the authority to effectively recommend whom the Town should hire.

7. From time to time, the Town employs summer help to assist the Road Crew. Two summer help employees were hired by the now departed Town Administrator for the summer of 2003 without any involvement by Jensen. In the future, if the Town hires summer help, Jensen will effectively recommend whom the Town should hire.

In early fall 2003, Jensen received a one day disciplinary suspension from Town Chairperson Jaeger for refusing to terminate the services of a summer help employee.

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

### **CONCLUSIONS OF LAW**

1. All regular full-time and regular part-time employees of the Town of Washington Public Works Department excluding supervisors and confidential, managerial and executive employees is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. A question concerning representation exists within the appropriate collective bargaining unit identified in Conclusion of Law 1.

3. The Public Works Crew Supervisor is a supervisor within the meaning of Sec. 111.70(1)(o), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

### **DIRECTION OF ELECTION**

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the Town of Washington Public Works Department excluding supervisors and confidential, managerial and executive employees who were employed on January 29, 2004, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employees desire to be represented by Teamsters Local 75 for the purposes of collective bargaining with the Town of Washington.

Given under our hands and seal at the City of Madison, Wisconsin, this 29th day of January, 2004.

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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

**THE APPROPRIATE BARGAINING UNIT**

Based on the record and the parties' stipulations at hearing, 1/ we are persuaded that a collective bargaining unit consisting of all regular full-time and regular part-time employees of the Public Works Department is an appropriate unit within which to conduct an election. Aside from law enforcement and firefighting employees who we traditionally place in separate bargaining units, in part because they are subject to a different interest arbitration statute than non-law enforcement/firefighting employees (see Sec. 111.77, Stats.), this unit includes all regular full-time and regular part-time municipal employees of the Town.

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*1/ During the hearing, the parties advised the examiner that the two part-time Landfill employees worked 18-20 hours per week on a year round basis and agreed that these two employees should be included in the bargaining unit. In its post-hearing written argument, the Town objected to inclusion of the two Landfill employees asserting that their hours are sporadic. We rely on the facts and agreement expressed in the record and reject the Town's change in position as untimely.*

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**STATUS OF PUBLIC WORKS CREW SUPERVISOR**

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).

When the Town employed a Town Administrator, the record persuades us that Public Works Crew Supervisor Jensen was not a supervisor. At that time, it was the Town Administrator who effectively possessed the authority to hire and discipline employees.

With the departure of the Town Administrator, the question becomes whether the Town Chairperson is now the supervisor of the Road Crew or whether the Town has given Jensen sufficient supervisory authority to warrant a conclusion that he is the supervisor.

Looking first at Factor 1, given the very recent nature of the transition from Town Administrator to Town Chairperson (2 ½ months prior to hearing) and the small size of the work force in question, we do not have any actual instances of hiring or discipline to examine when determining the extent of Jensen's authority in these critical indices of supervisory authority. What the record does tell us is that Jensen is uncertain about the extent of his disciplinary authority, largely because the Town had not told him what it is prior to the evidentiary hearing in this matter. At hearing, however, the Town Chairperson credibly testified that Jensen has the authority to effectively recommend hiring and to independently impose discipline up to and including suspensions. We generally are reluctant to speculate about the duties and responsibilities of a position where corroborating evidence of actual events is sparse. On the other hand, a supervisor's potential authority – if it is authentic – is sufficient

to exclude him or her from a bargaining unit even if the supervisor has had few if any occasions to exercise that authority. NORTH CENTRAL HEALTH CARE FACILITIES, INC., DEC. NO. 29770 (WERC, 11/99). In this case, the question is particularly close, because Jensen in fact was not a supervisor (despite his job title) when the Town had the services of a paid Town Administrator. When the Town decided to dispense with a paid Administrator, the Town's elected Board Chairperson assumed many of the managerial duties formerly performed by the Administrator. Nonetheless, we see nothing in this record to disturb or discredit Jaeger's and the Town Board's testimony that the Town now expects Jensen to fill some of the supervisory void left by the Administrator's departure; on the contrary, it is reasonable that the Town Chairperson would expect Jensen to handle the day-to-day supervision of the Crew in the absence of a full-time Town Administrator. The Town Board's credible testimony supports the Town Chairperson's understanding of Jensen's hiring and disciplinary authority and confirms that granting that authority to Jensen is consistent with the Town Board's motion giving the Town Chairman overall personnel authority. Therefore, based on the record created during the hearing, we conclude that Jensen has the authority to effectively recommend hiring and has the independent authority to issue discipline up to and including suspension. 2/

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*2/ We reach this conclusion without considering the revised Crew Supervisor job description adopted by the Town on November 5, 2003 which specifies:*

*Supervises all Public Works employees-includes authority to discipline up to and including suspension up to 5 working days and authority to terminate regular employees during probationary period and part-time or seasonal employees at anytime.*

*We deny the Town's request that the record be reopened to consider this document.*

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As to Factors 2 and 3, Jensen has the authority to direct and assign work to the other two members of the Road Crew but the exercise of that authority does not involve the exercise of significant independent judgment.

As to Factor 4, Jensen's higher level of compensation (received when he became the Road Crew Supervisor) at least partially reflects his supervisory authority.

As to Factors 5-6, Jensen spends the substantial majority of his time performing the same work as the other members of the Road Crew, but, because he has substantial disciplinary/hiring authority, his supervisory authority is primarily over employees rather than activity.

As to Factor 7, when Jensen exercises his disciplinary/hiring authority, he exercises independent judgment. When directing the work of employees, little independent judgment is

exercised.

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Considering all of the foregoing, we conclude that Jensen's disciplinary/hiring authority warrants a conclusion that he is a supervisor. If, however, the eligible employees select Teamsters as their representative and it should develop in the future that Jensen does not in fact have the supervisory authority attributed to him in this record, the Teamsters are free to file a petition for unit clarification seeking his inclusion in the unit.

Dated at Madison, Wisconsin, this 29th day of January, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner