

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/  
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

Involving Certain Employees of

**TOWN OF MAPLE GROVE**

Case 2  
No. 62950  
ME-3941

**Decision No. 30874**

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**Appearances:**

**Steven J. Urso**, Executive Assistant, Wisconsin Professional Police Association/LEER Division, 340 Coyier Lane, Madison, WI 53713, appearing on behalf of the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

**Christopher R. Bloom**, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, WI 54702-1030, appearing on behalf of the Town of Maple Grove.

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

On October 31, 2003, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (WPPA) 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 Maple Grove wish to be represented by WPPA for the purposes of collective bargaining.

The Town and WPPA disagreed over whether Lead Patrolman Randy LaLiberty would be eligible to vote in the election. The parties waived the requirement that hearing on this disagreement be held within 30 days of the date a hearing request is made.

Dec. No. 30874

Hearing was held on January 6, 2004, by Commission Examiner Peter Davis in Hillsdale, Wisconsin. The parties filed post-hearing argument by February 16, 2004.

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

### **FINDINGS OF FACT**

1. Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein WPPA, is a labor organization having its principal offices in Madison, Wisconsin.

2. The Town of Maple Grove, herein the Town, is a municipal employer having its principal offices in Hillsdale, Wisconsin. The Town is governed by a three-person Town Board and provides services to its citizens -- primarily in the form of maintaining the Town's roads.

The Town employs the following two individuals: Lead Patrolman Randy LaLiberty (40 hours per week) and Patrolman Harley Hover (32 hours per week). Their hourly wage rates are \$14.25 and \$13.00, respectively. LaLiberty also has the use of a Town vehicle.

3. LaLiberty and Hover are responsible for maintaining the Town's roads. They jointly decide what work to perform each day but LaLiberty has the authority to make work assignments to Hover. LaLiberty spends the substantial majority of his work day performing the same work as Hover. LaLiberty has the authority to call Hover into work or extend Hover's work hours.

4. LaLiberty has the authority to issue verbal and written reprimands to Hover but the Town Board would independently investigate any allegations of serious misconduct by Hover and independently determine whether he should be suspended or terminated.

5. If Hover left the Town's employ and the Town decided to fill his position, LaLiberty would play a role in the process of hiring Hover's successor but does not have the authority to effectively recommend who should be hired.

6. LaLiberty does not possess supervisory authority in sufficient combination and degree to be a supervisor.

7. LaLiberty effectively recommends which Town roads should be repaired when and which contractor should perform the work. By these recommendations, LaLiberty does not sufficiently participate in the formulation, determination and implementation of management policy or have sufficient authority to commit the Town's resources to be a managerial 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 Maple Grove 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 Lead Patrolman is neither a supervisor within the meaning of Sec. 111.70(1)(o), Stats., nor a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

### **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 Maple Grove excluding supervisors and confidential, managerial and executive employees who were employed on April 2, 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 Wisconsin Professional Police Association/Law Enforcement Employee Relations Division for the purposes of collective bargaining with the Town of Maple Grove.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of April, 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

**Town of Maple Grove**

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

**STATUS OF LEAD PATROLMAN AS A 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).

Looking first at Factor 1, we conclude that Lead Patrolman LaLiberty does not have the authority to effectively recommend the hire of Town employees. We reach that conclusion based on the evidence presented as to how Mr. Hover was hired shortly after Mr. LaLiberty became the Lead Patrolman and how the current Town Board would proceed to fill the Patrolman position if Mr. Hover were to leave the Town's employ.

As to Hover's hiring, the record indicates Mr. LaLiberty was part of the hiring process but did not make a recommendation as to who should be hired. The Town correctly points out that Mr. LaLiberty was given the opportunity to make a recommendation but declined to do so. Nonetheless, the absence of a recommendation or of evidence that the Town would have followed his recommendation had he made one precludes us from finding that the hiring of Hover demonstrates the authority to effectively recommend hiring.

As to evidence presented regarding the role it is anticipated LaLiberty would now play in a hiring decision, the testimony of Town Board member Humphrey satisfies us that the Town Board would play a very active role in the hiring decision. Although Mr. LaLiberty would play a role in the hiring process, we are persuaded that the Town Board would ultimately make an independent hiring decision.

The Town points out that when LaLiberty and Hover need immediate help for several hours cleaning up storm damage, Mr. LaLiberty has the independent authority to obtain individuals to provide that assistance. From the evidence presented, we conclude that such individuals are independent contractors and thus that procuring their services does not reflect the authority to hire Town employees. Even if such individuals were Town employees, such action by Mr. LaLiberty would not constitute significant evidence of hiring authority given the extraordinarily short and sporadic nature of such employees' tenure.

As to the Factor 1 issue of disciplinary authority, we conclude that Mr. LaLiberty has the authority to issue verbal and written reprimands but does not have the authority to impose or effectively recommend more serious discipline or discharge.

The absence of any disciplinary action during Mr. LaLiberty's tenure as Lead Patrolman or of any written or oral communication between the Town and Mr. LaLiberty regarding his disciplinary authority makes it difficult to evaluate this question. Mr. LaLiberty grudgingly but candidly and credibly testified that he had the authority to issue verbal and written reprimands to Mr. Hover. However, the testimony by Town Board member Humphrey that the Town Board would independently investigate any alleged serious misconduct by Mr. Hover persuades us that the Board would also independently determine whether a suspension or discharge should be imposed on Mr. Hover. Thus, we conclude that Mr. LaLiberty does not have the authority to impose or effectively recommend suspension or discharge.

Given the small size of the workforce, the Factor 1 considerations of promotion and transfer are not relevant.

Turning to Factor 2, it is clear that Mr. LaLiberty has the authority to direct and assign the work of Mr. Hover. While Mr. LaLiberty credibly insisted that he and Mr. Hover work together as co-equals, he ultimately admitted that if push comes to shove he has the authority to direct Mr. Hover's work. Our conclusion is also consistent with testimony to the effect that Mr. Hover believes he works for Mr. LaLiberty -- not the Town Board.

As to Factor 3, Mr. Hover is the only employee allegedly supervised and the Town Board members share authority with Mr. LaLiberty over Mr. Hover.

Regarding Factor 4, Mr. LaLiberty is paid \$14.25 per hour compared to Mr. Hover's hourly rate of \$13.00. Mr. LaLiberty also has the use of a Town vehicle. The record satisfies us that the difference in compensation at least partially reflects Mr. LaLiberty's authority to direct the work of Mr. Hover.

Turning to Factors 5-7, Mr. LaLiberty spends the substantial majority of his time performing the same work as Mr. Hover. Whether working together or separately, Mr. LaLiberty is primarily supervising Mr. Hover's activities. When directing and assigning the work of Mr. Hover, Mr. LaLiberty does exercise independent judgment. For instance, he has authority to call Mr. Hover into work or to extend his work day if needed to meet the Town's needs.

Considering all of the foregoing, we conclude that Mr. LaLiberty does not possess supervisory authority in sufficient combination and degree to make him a supervisor. While his authority to direct and assign work is substantial and he exercises independent judgment when doing so, his disciplinary authority is limited and he does not effectively recommend hiring.

In response to the Town's citation of prior Commission decisions that it believes support a finding of supervisory status, we note that in all of those cases, the individual found to be a supervisor had either significant disciplinary or hiring authority. SOMERSET SCHOOL DISTRICT, DEC. NO. 24968-A (WERC, 3/88) -- ". . . the authority to effectively recommend other discipline." -- VILLAGE OF NECEDAH, DEC. NO. 28192-B (WERC, 10/95) -- "significant disciplinary and hiring authority." -- WHITEHALL SCHOOL DISTRICT, DEC. NO. 29286-B (WERC, 7/99) -- ". . . significant authority in the hiring and discipline of employees." Mr. LaLiberty has neither. It is the absence of significant authority in these two areas that distinguishes this case from those cited by the Town and provides the fundamental basis for our conclusion that Mr. LaLiberty is not a supervisor.

In making this determination, we acknowledge the Town's argument that a conclusion that Mr. LaLiberty is not a supervisor leaves the Town with only part-time elected officials to monitor employee job performance. However, so long as the Town Board (quite understandably in our view given the small size of the workforce) maintains independent control over hiring and significant disciplinary decisions, we believe that a determination that Mr. LaLiberty is not a supervisor is warranted.

**STATUS OF LEAD PATROLMAN AS A MANAGERIAL EMPLOYEE**

A “managerial” employee is specifically excluded from the definition of “municipal employee” found in Sec. 111.70(1)(i), Stats. However, because there is no statutory definition of a “managerial” employee, that term has been defined by the Commission through case law. With judicial approval, the Commission has defined a “managerial” employee by considering the extent to which the employee participates in the formulation, determination and implementation of management policy or possesses the authority to commit the employer’s resources. CITY OF MILWAUKEE V. WERC, 71 WIS.2D 709 (1976); VILLAGE OF WHITEFISH BAY, 103 WIS.2D 443 (CT. APP. 1981); KEWAUNEE COUNTY V. WERC, 141 WIS.2D 347 (CT. APP. 1987); MANITOWOC COUNTY V. LOCAL 986A, 170 WIS.2D 692 (CT. APP. 1992); COUNTY OF EAU CLAIRE V. AFSCME LOCAL 2223, 190 WIS.2D 298 (CT. APP. 1994). To confer managerial status, the employee’s policy role must be “at a relatively high level” MARINETTE COUNTY, DEC. NO. 26154-B (WERC, 3/92), or the employee’s authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the municipal employer’s operations. VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88).

The Town argues that Mr. LaLiberty is a managerial employee based on his policy role and his authority to commit Town resources. We do not find the Town’s arguments to be persuasive.

The focal point of Town government is presently the maintenance of its roads. Mr. LaLiberty plays an important role in recommending which roads should be repaired when and then making arrangements with contractors to get the work done. However, this role is not a “high level” policy role or an allocation of resources “in a manner which significantly affects the nature and direction” of the Town’s operations. In the context of this record and this employer, a managerial “policy” or “resource” role would be one that can determine whether the Town should get out of the business of maintaining roads and/or use its resources to provide other types of services. Only the Town Board can make that kind of determination. Thus, we find that Mr. LaLiberty is not a managerial employee.

Dated at Madison, Wisconsin, this 2nd day of April, 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