

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**RHINELANDER CITY EMPLOYEES LOCAL 1226, AFSCME, AFL-CIO**

Involving Certain Employees of the

**CITY OF RHINELANDER**

Case 111  
No. 63224  
ME(u/c)-1095

**Decision No. 31055**

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**Appearances:**

**Philip Salamone**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin, appearing on behalf of the Rhinelander City Employees Local 1226, AFSCME, AFL-CIO.

**Philip I. Parkinson**, City Attorney, 135 South Stevens Street, Rhinelander, Wisconsin, appearing on behalf of the City of Rhinelander.

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

On January 12, 2004, Rhinelander City Employees Local 1226, AFSCME, AFL-CIO, herein the Union, filed a petition with the Wisconsin Employment Relations Commission to clarify an existing Union-represented bargaining unit of City of Rhinelander employees by including the position of Parks Director. The City opposes the petition contending that the Director is a supervisor and a managerial employee.

Examiner John R. Emery, a member of the Commission's staff, held a hearing regarding the petition on April 15, 2004, in Rhinelander, Wisconsin. The parties filed post-hearing briefs, the last of which was received May 26, 2004.

Dec. No. 31055

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

**FINDINGS OF FACT**

1. The City of Rhinelander, herein the City, is a municipal employer having offices located at 135 South Stevens Street, Rhinelander, Wisconsin 54501.

2. Rhinelander City Employees Local 1226, AFSCME, AFL-CIO, herein the Union, is a labor organization, having offices located at 7111 Wall Street, Schofield, Wisconsin 54476.

3. At all times pertinent hereto, the Union has been the voluntarily recognized exclusive bargaining representative for a unit described in the parties' 2002-2003 collective bargaining agreement as

. . . regular, part-time and seasonal Employees, who are Union members and who are employed in the following Departments of the City: Public Works, Sewer and Water Construction, Water and Waste Treatment Plant Operators, Cemetery and Parks, Golf Course, excluding Department Heads, supervisory and confidential clerical personnel.

4. For a number of years, the City operated a Parks Department, which oversaw maintenance of City parks and buildings and also directed the City's recreation programs. Prior to 2002, the Department Director was Darlene Larson. The Director was not a bargaining unit employee. She managed the Department and supervised both bargaining unit and non-bargaining unit employees who worked in the Department.

5. Larson retired in 2002. At that time, the City restructured the Department by transferring its recreation functions to the local YMCA and revised the Director's job description, which now states, in pertinent part, as follows:

. . .

**Title:** Parks Director

. . .

**Purpose of Position**

The purpose of this position is to direct, administer and oversee the operations of the City of Rhinelander Park System, and to maintain designated City

buildings and facilities. This work is performed under the direction of the City Administrator, the Mayor, and the Parks & Recreation Committee. This position reports directly to the City Administrator.

### **Essential Duties and Responsibilities**

**The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.**

- Directs, administers and oversees the operations of the City of Rhinelander Park System and the City of Rhinelander municipal buildings; directs the preparation of an annual departmental budget; directs development of planning for all aspects of the Parks Department; analyzes existing programs and directs development of maintenance procedures and directs the planning and design of City park and recreational facilities.
- Supervises Park Department staff; directs the recruitment of and interviews and selects new employees; directs training and continuing education activities; plans, coordinates, assigns and reviews work; establishes, acts on problems and concerns; approves leave; evaluates performance and approve transfers, promotions, disciplinary actions, discharges and recommends salary increases for Parks employees.
- Develops, implements and monitors administration of departmental policies and procedures; directs the development, maintenance and enforcement of park ordinances; inspects parks and facilities; ensures compliance with all applicable health and safety codes and regulations.
- Develops and presents project and program proposals to elected officials; regulatory agencies, benefactors, special interest groups, the public and media to obtain support/approval and/or funding; directs the preparation of and edits annual program reports.
- Coordinates a variety of construction, maintenance, planning, event management and support service activities with other City departments, local, state and federal units of government, private corporations, foundations, school districts and volunteer agencies and organizations that relate to Rhinelander City parks.
- Researches availability of funding through a variety of sources and assists in the development of grant applications.

- Represents the Parks Department to the news media regarding recreation and environmental issues; responds to inquiries; receives and ensures resolution of complaints; acts as department liaison and maintains working relationships with city officials and councils, committees, boards, state agencies, sports associations, foundations, business associations, and schools.
- Performs long-range park system planning and site and facility master planning; directs in-house design of park and recreation facilities; directs the administration of designs and construction contracts.
- Maintains current professional knowledge of laws, regulations, trends, etc.

. . .

6. In May, 2002, the City hired Gunder Paulsen as Parks Director. Previously, Paulsen had worked as Assistant Greenskeeper at the Municipal Golf Course, a bargaining unit position. Subsequent to becoming Parks Director, Paulsen was removed from the bargaining unit by the City.

7. In early 2003, the Department acquired responsibility for oversight and operation of the Municipal Cemetery, which includes opening and closing graves. At about the same time, the Department's sole full-time bargaining unit employee, Terry Winquist, retired. The City has not filled Winquist's position and has operated the Department using part-time and seasonal employees in addition to Paulsen.

8. Paulsen is subject to the authority of the City Administrator, Mayor and Parks and Recreation Committee but has autonomy in operating his Department and supervising the Department's six (one part-time year round, two nine-month and three four-month) employees. His position on the City organizational chart is equivalent to that of the other City Department heads. He has sole authority to hire employees, assign work and authorize leave time and overtime, which he has exercised. He also has authority to discipline and, if necessary, terminate employees, but has not had occasion to do so.

Paulsen spends more than 50% of his time performing all of the Department's functions alongside the other employees, including operating heavy equipment to open and fill graves at the Cemetery, removing snow, grooming and maintaining the City's baseball fields, and caring for the City's parks.

Paulsen receives the same salary as the City employees responsible for the operation of the Golf Course and Waste/Wastewater departments.

9. Paulsen manages an annual Department budget of approximately \$200,000.00, of which approximately \$165,000.00 consists of wages and benefits for Department employees. He prepares the annual budget with the assistance of the City Comptroller, which then goes to the City Council for approval, which is the same procedure employed by the other Department heads. He estimates anticipated costs for ongoing and projected Department projects. Due to budget constraints, he engages in efforts to find supplemental funding outside the City budget for certain projects and also solicits donations and volunteer support from local businesses and civic groups. Since his appointment, he has been instrumental in modifying Department policies and procedures.

10. Paulsen has 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**

Parks Director Gunder Paulsen is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70 (1)(i), Stats.

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

#### **ORDER CLARIFYING BARGAINING UNIT**

The position of Parks Director shall continue to be excluded from the bargaining unit represented by Rhinelander City Employees Local 1226, AFSCME, AFL-CIO referenced in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 26<sup>th</sup> day of August, 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

CITY OF RHINELANDER

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

**POSITIONS OF THE PARTIES**

**The City**

The WERC has set forth seven criteria for determining supervisory status and the incumbent qualifies under all the criteria. (1) He can hire, fire and discipline employees on his own authority and set their level of pay, subject only to control by elected authorities. (2) He directs the Parks employees, schedules their hours of work and assigns their tasks. (3) He is the sole supervisor of six other employees. (4) He is paid the same as other City department heads. (5) He supervises all aspects of the Park employees' work, thus he is supervising employees, not just activities. (6) Although he spends 50% of his time doing manual labor, the Director is overseeing other employees even at these times and so is supervising most, if not all, of the time. (7) He has complete discretion in supervising his employees, and thus uses his independent judgment in directing the employees in the same way as the other department heads.

The Parks Director is also a managerial employee under the definition used by the WERC. He develops his own budget in the same manner as the other department heads and expends the allocated funds in his budget as he determines appropriate. He determines the Department's workforce needs, hires employees and determines their wage rate. He determines user fees for Park facilities, enters into contracts to purchase needed items, determines the method of disposal for surplus equipment and develops programs for the Department. Thus, the Parks Director qualifies as a managerial employee.

Given all of the foregoing, the City argues that the Parks Director should continue to be excluded from the bargaining unit.

**The Union**

The Union contends that the Director is neither a manager nor a supervisor, but a lead worker. He does not determine the kind and level of services to be provided or the capital improvements to be made. His budget is prepared by the Comptroller, and his personal authority to expend funds is limited to \$500.00. The majority of his duties involve manual labor, not supervisory functions as he contends. Further, with the exception of the City Hall custodian, his supervisory role does not extend to bargaining unit employees, but only to part-time and seasonal employees. His supervisory role is therefore no more than *de minimis*.

WERC precedents establish that the Park Director's position is closer to that of a lead worker, because he supervises few employees and spends large amounts of time on non-supervisory tasks. His higher rate of pay, in and of itself, is not enough to establish him as a

supervisor. This case is akin to DOOR COUNTY (COURTHOUSE), DEC. NO. 24016-G (WERC, 3/03), wherein it was determined that just such a parks employee was a lead worker and not a supervisor, where he only supervised seasonal employees for a portion of the year and did not exercise independent judgment.

The Union asserts that the City is attempting to avoid providing the wages and benefits set forth in the collective bargaining agreement by transferring work out of the bargaining unit to part-time and seasonal employees. Thus, the former bargaining unit positions of Park Maintenance I and II and Cemetery Sexton continue to exist in the contract, but are unfilled, while the work of those positions is accomplished by the Director and non-bargaining unit employees.

Given all of the foregoing, the Union contends that the Parks Director should be included in the bargaining unit.

## DISCUSSION

### Supervisory Status

The statutory definition of a supervisor in Sec. 111.70(1)(o)1, Stats., is the following:

. . . 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 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 applying this statutory definition, we focus upon 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 persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the individual is paid for his skills or for his supervision of employees;
5. Whether the individual is supervising an activity or is primarily supervising employees;

6. Whether the individual 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. 1/

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*1/ CITY OF MILWAUKEE, DEC. NO. 6960-J (WERC, 5/89).*

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We have consistently held that not all of the above factors need to reflect supervisory status for us to find an employee to be a supervisor. Our task is to determine whether the factors are present in sufficient combination and degree to warrant finding an employee to be a supervisor. 2/

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*2/ ONEIDA COUNTY, DEC. NO. 24844-G (WERC, 6/98).*

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As to Factor 1, the record clearly establishes that the Director effectively recommends the hiring, discipline or discharge of employees. There do not appear to be any promotional or transfer opportunities that would assist us in evaluating the Director's supervisory status.

Regarding Factors 2 and 3, the Director directs and assign the work of the Department and is the only one to do so. The number of employees supervised at any given time varies from two to six.

Turning to Factor 4, the Director's level of compensation is the same as that of several other department heads (\$40,365 in 2004 minus a 5% holdback), and we are satisfied that his compensation at least partially reflects his supervisory responsibilities.

Looking at Factors 5 and 6, we conclude that the Union is correct in arguing that the Director spends a majority of his time performing the same work as the employees he supervises. However, given his very broad authority over said employees, we also conclude that he is primarily supervising employees and not their activity when he performs such work.

As to Factor 7, the record clearly establishes that the Director has very substantial autonomy and exercises independent judgment when supervising the Department's employees.

Considering all of the foregoing, it is clear the Director is a supervisor. He has broad hiring and disciplinary authority and exercises independent judgment and authority over the work of Department employees. While the Union correctly points out that most of the Department employees the Director supervises are seasonal and none are full-time bargaining unit employees, the individuals in question are nonetheless "employees" within the meaning of Secs. 111.70(1)(i) and (1)(o), Stats., and thus the Director's authority over them is directly relevant to his status as a supervisor.

Contrary to the Union's argument, we find that our conclusion is consistent with our decision in DOOR COUNTY, SUPRA. In that case, the Parks Lead Worker was found not to be a supervisor because there was another level of supervisory authority above him (the Parks Director) and there was insufficient evidence that he had any meaningful role in hiring, discipline, assignment of work, or recommendations for promotion. Here, there is no additional higher level of supervision and the Director has substantial authority in hiring, discipline and assignment of work.

The Union also cites VILLAGE OF GERMANTOWN, DEC. NO. 12315 (WERC, 12/73) wherein the Commission found a Sanitation Department Superintendent was not a supervisor primarily because he had only two subordinates and spent a majority of his time performing unit work. Here, while the Director spends a majority of his time performing unit work, he has far more hiring and disciplinary authority than was present in GERMANTOWN.

The Union also points to MILWAUKEE COUNTY, DEC. NO. 14169-A (WERC, 10/77) and LACROSSE SCHOOLS, DEC. NO. 14653 (WERC, 5/76) as decisions in which performing unit work played a substantial role in a determination that the individuals in question were not supervisors. Again, as was noted above regarding GERMANTOWN, the Director has far more hiring and disciplinary authority than was present in MILWAUKEE or LACROSSE.

Given all of the foregoing, we have concluded that the Parks Director is a supervisor.  
3/ Hence, we need not and do not determine whether he is also a managerial employee.

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*3/ In reaching this conclusion, we make no judgments as to whether the Union may have other means to address its concern as to loss of unit positions/work. Consistent with our role in unit clarification proceedings, we have only applied the law to the applicable facts and determined that the Parks Director is a supervisor.*

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Dated at Madison, Wisconsin, this 26<sup>th</sup> day of August, 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