

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

AFSCME COUNCIL 40

Involving Certain Employees of

MANITOWOC COUNTY

Case 401
No. 64653
ME(u/c) – 1136

Decision No. 31547

Appearances:

Michael J. Wilson, Staff Representative, Wisconsin Council 40, 8033 Excelsior Drive, Suite B, Madison, Wisconsin, and **Neil Rainford**, Staff Representative, Wisconsin Council 40, 1311 Michigan Avenue, Manitowoc, Wisconsin, appearing on behalf of AFSCME Council 40.

Steven J. Rollins, Corporation Counsel, Manitowoc County Courthouse, 1010 South Eighth Street, Manitowoc, Wisconsin, appearing on behalf of Manitowoc County.

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

On April 14, 2005, AFSCME Council 40, hereinafter AFSCME or Union, filed a petition with the Wisconsin Employment Relations Commission seeking to have the Commission clarify an existing bargaining unit of employees of the Manitowoc County Highway Department, hereinafter County or Employer. Hearing in the matter was held in Manitowoc, Wisconsin on July 26, 2005, before Commissioner Susan J.M. Bauman, serving as Hearing Examiner.

The Employer, contrary to the Union, asserts that the incumbent in the disputed position of Road Safety Supervisor is a supervisory employee who therefore cannot be included in the bargaining unit. The parties filed written argument, the last of which was received on October 17, 2005.

Dec. No. 31547

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

FINDINGS OF FACT

1. Manitowoc County Highway Department Employees, Local 986, AFSCME, AFL-CIO is a labor organization with a mailing address 1311 Michigan Avenue, Manitowoc, Wisconsin, serving as the collective bargaining representative for a bargaining unit described in the most recent contract between Local 986 and the County as: “. . . all employees of the Employer engaged in highway and bridge construction and maintenance work, shop and office employees, other employees in related activities of the Highway department, except the employees in the position of Highway Commissioner, Engineer, Road Superintendent, Shop Superintendent, Assistant Highway Superintendent, Patrol Superintendent, Confidential Administrative Assistant and Director of Financial Services, excluding temporary, seasonal, supervisory, confidential and managerial employees.”

2. Manitowoc County is a municipal employer which maintains a Highway Department and has principal offices at 1110 S. 9th Street, Manitowoc, Wisconsin. The County employs approximately 664 individuals, with 64 in the Highway Department, nine of whom (the Highway Commissioner, Administrative Assistant, Engineer, Director of Financial Services, Cost Accountant, Shop Superintendent, two Road Superintendents and the disputed Road and Safety Supervisor) are not included in the bargaining unit represented by the Union.

3. Brian Glaeser has been an employee of the Manitowoc County Highway Department since August 21, 1989, and has held the position of Road and Safety Supervisor since February 16, 2004. Immediately prior to that time, Glaeser was the Accountant/Foreperson, reporting to the Road Superintendent, and, in that capacity, a member of the bargaining unit. As Accountant/Foreperson, the essential job functions, and the percentage of time spent on each were as follows:

1. Schedules, directs, and assists employees performing maintenance and construction activities. Coordinates equipment and personnel needed for projects; maintains record of costs and production for all construction and maintenance of the county trunk system. (35%)
2. Processes time cards, including reviewing and assigning charges to work projects and materials; performing data entry, and preparing payroll reports. (35%)
3. Records all payments for work completed and materials sold. (10%)
4. Prepares billing for state and other municipalities on a monthly basis. (10%)
5. Supervise snow removal operations. (10%)

4. Manitowoc County established the position of Road and Safety Supervisor in the Highway Department to coordinate the Department's safety policies and to supervise certain Department employees previously under the direction of an Assistant Highway Superintendent. The County eliminated the Assistant Highway Superintendent position when it created the Road and Safety Supervisor position. Glaeser spends 80% of his time meeting these responsibilities and 20% performing time card related duties he previously performed as Accountant/Foreperson.

Although the printed job description indicates that the Road and Safety Supervisor reports to the Road Superintendent, the position in fact reports to the Highway Commissioner. The essential functions of the position are listed in the job description as follows:

1. Coordinates the implementation and enforcement of all safety policies. Coordinates required training and assures that all personnel subject to the policy attend required training. Maintains all records required by the safety policies. Creates requisitions to purchase all safety equipment required by the policies.
2. Schedules, directs, and assists employees performing maintenance and construction activities. Coordinates equipment and personnel needed for projects; maintains records of costs and production for all construction and maintenance of the county trunk system.
3. Records payments for work completed and materials sold.
4. Prepares billing for state and other municipalities.
5. Reviews and authorizes utility permits. Inspects work completed to assure compliance with permit issued.
6. Supervises snow removal operations.

5. In his capacity as Road and Safety Supervisor, Glaeser works with an outside contractor, Alpha Terra Sciences, to develop the safety policies for the Department. Working with the Department safety committee, Glaeser has the final decision in purchasing specific safety equipment, including respiratory masks. He is responsible for seeing that Department personnel receive appropriate safety training. A substantial aspect of Glaeser's duties in coordinating the safety policies includes identifying individual employee training needs, and counseling employees when policies are violated.

In the event a patrolman does not comply with a safety rule, Glaeser, without consulting the Highway Commissioner, can issue a "citation," i.e., a counseling statement that the employee has failed to comply with safety rules. Glaeser can also issue reprimands for

matters unrelated to safety violations. Although the Highway Commissioner must sign off on such disciplinary action, on the one occasion where non-safety discipline has been imposed, the Highway Commissioner and Glaeser had agreed as to the discipline.

The Highway Commissioner plays an active role in investigating many disciplinary matters and would independently determine both the facts and the appropriate discipline if suspension or discharge were contemplated.

Glaeser directs the work of 13 full-time patrolmen and ten seasonal employees. He participated in the hiring interviews for the seasonal employees along with the Highway Commissioner and another non-bargaining unit employee. A consensus was reached as to who should be hired. In the event a regular patrolman was to be hired, Glaeser would participate in the consensus hiring process.

Glaeser gives the patrolmen and seasonal employees their daily work assignments and adjusts their work schedules depending on employee absences. He typically spends a portion of his work day outside of the Department office determining what work needs to be performed and, on occasion, observing the work of the employees he supervises. During winter months, Glaeser alternates supervising weekend winter operations with two other non-bargaining unit individuals, Road Superintendents Chuck Behnke and Greg Schnell. When doing so, Glaeser has complete authority to call in employees and to order overtime in order to address winter weather conditions.

Glaeser is paid an annual salary of \$45,897, or \$22.066 per hour. The patrolmen he supervises are paid \$18.31 per hour, although overtime earnings can generate substantial additional income. Glaeser currently is earning between \$3 and \$4 more per hour than he was as an Accountant/Foreperson, which position no longer exists. This pay differential, in part, is attributable to Glaeser's supervisory duties.

6. Glaeser 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

The incumbent in the position of Road and Safety Supervisor 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 Road and Safety Supervisor shall continue to be excluded from the bargaining unit represented by AFSCME.

Dated at Madison, Wisconsin, this 6th day of December, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Manitowoc County

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

The County, contrary to the Union, asserts that the Road and Safety Supervisor (Glaeser) cannot be included in the Highway Department bargaining unit because he is a supervisor.

The position of Road and Safety Supervisor was created in February 2004. Prior to his appointment to the position of Road and Safety Supervisor, Glaeser served as the Accountant/Foreperson. In his new position, Glaeser retained 20% of the duties he had done previously (reviewing and recording time cards) and performs 80% new work, a significant portion of which involves the coordination and implementation of the safety policies and direction of employees previously supervised by the abolished Assistant Highway Superintendent position.

Section 111.70(1)(o)1, Stats., defines a supervisor as an 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.

When interpreting this statutory language, we consider the following:

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/her skill or for his/her 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/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

Not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01).

Looking at Factor 1, it is undisputed that Glaeser participated in the interviews of prospective seasonal employees along with Highway Commissioner Kennedy. Kennedy and Glaeser would both be involved in interviewing candidates for a permanent patrolman, should a vacancy exist. It is clear that hiring decisions are made by the interviewing team on a consensus basis.

As to discipline, Glaeser has sole discretion to issue "citations" in matters involving safety violations. However, the record also establishes that Kennedy plays an active role in many disciplinary decisions and, when confronted with allegations of significant misconduct, independently investigates the facts and determines whether suspension or discharge are warranted.

As to Factor 2, Glaeser has the authority to assign work and prioritize the workflow. He makes work assignments to patrolmen on an almost daily basis. Although each patrolman is assigned a section and much of the work is routine, Glaeser has the authority to assign patrolmen to do specific work at specific times. In addition, as the supervisor of winter snow removal operations one of every three weekends during winter months, he has the ability to call in personnel to plow snow, which often generates overtime.

Turning to Factor 3, Glaeser has direct authority over 13 permanent and ten seasonal employees. Organizationally, Glaeser's position is akin to the Road Superintendent and the Shop Superintendent, among others. Like Glaeser, these individuals report directly to the Highway Commissioner. The patrolmen supervised by Glaeser have no supervision aside from Glaeser and the Commissioner himself.

Looking at Factor 4, Glaeser's salary is equivalent to \$22.066 per hour, \$3.756 more per hour than the patrolmen he supervises. He is earning between \$3 and \$4 per hour more than he did as an Accountant/Foreperson, a wage differential that is supportive of supervisory status.

As to Factors 5 and 6, Glaeser spends very little of his time performing the work of those he supervises. He spends time on the road supervising the work of the patrolmen, observing them in the field. He also does some of the accountant type work that he previously performed.

Regarding Factor 7, Glaeser exercises independent judgment in his work, both as to coordination of the safety program and the supervision of the employees. He has complete independence with regard to directing and counseling employees on safety matters and works independently with regard to the assignment of work and supervision of the patrolmen and weekend winter snow operations.

Considering the foregoing, we conclude by a slim margin that the Road and Safety Supervisor is a supervisor. Although his disciplinary authority is very limited, he plays a significant role in the hiring process and directs the work of a large number of employees who have no other direct supervisor. He does not perform the work of the employees he supervises and is compensated in part for his responsibility over these employees.

In reaching this conclusion, we have considered the Union's argument comparing the supervisory authority of Glaeser and that of charge nurses in SHAWANO COUNTY (MAPLE LANE HEALTH CARE FACILITY), DEC. NO. 20996-A (WERC, 01/84), wherein the charge nurses were not found to be supervisors. In that case there was a specific finding that the department head was not constrained by the recommendations of the charge nurses as to disciplinary actions. We agree that Glaeser's disciplinary authority is not sufficient to make him a supervisor. However, his role in the hiring process and the large number of employees whose works he directs lead us to the conclusion that he is a supervisor and should be excluded from the bargaining unit.

The Union also cites CITY OF MAUSTON, DEC. NO. 21424-E (WERC, 11/93) and CITY OF LA CROSSE, DEC. 7822-C (WERC, 1/94) for the proposition that participation in employment interviews does not, in and of itself, elevate a position to supervisory status. In finding Glaeser to be a supervisor, we do not deviate from those decisions. We are satisfied that Glaeser's role in the hiring process exceeds the role referenced in MAUSTON and LA CROSSE and we again emphasize the large number of employees whose work he directs.

The Union also argues that Glaeser's testimony reveals a very limited role in his authority to direct and assign the workforce. The Union contends that the role of the patrolmen is fairly well defined in that they each know their territory and know what needs to be done. Accordingly, the Union contends the Road and Safety Supervisor need exercise little independent or discretionary authority in directing employees. The Union advances a similar contention regarding Glaeser's role in snow removal. We believe that the Union underestimates Glaeser's authority. The fact that matters may be routine most of the time does not obviate the fact that Glaeser must exercise judgment with respect to when certain duties will or will not be carried out, as well as making decisions on when to call on personnel to commence snow clearing operations. While a call from the Sheriff's Department will trigger calling out people to clear snow, there are other instances where Glaeser independently determines when to call employees in to begin a plowing or sanding operation – decisions that affect overtime opportunities.

Certainly the Union is correct that the accounting functions that Glaeser continues to perform do not warrant exclusion from the bargaining unit as a supervisor. Similarly, the role that Glaeser plays in authorizing time off is administrative and does not warrant exclusion from the unit. On the other hand, although employee evaluations are not the basis for determining

pay raises or most promotions, they may be considered in the event an employee posts for a foreman position.¹ Thus, the fact that Glaeser completes annual evaluations of the employees he supervises does support a finding that he should be excluded from the bargaining unit.

Finally, the Union contends that the existing Road-Patrol-Airport Superintendent could handle any supervisory responsibilities that Commissioner Kennedy “might, at some point in the future, relinquish” and that Glaeser, in the Road and Safety position, should continue as a working foreman to the Patrolmen below him. We do not find Glaeser to be a working foreman inasmuch as he does not perform the same duties as those he supervises and he possesses sufficient supervisory authority to make him a supervisor. We also do not find that Kennedy has retained all supervisory authority, but rather conclude by a slim margin that he has given Glaeser sufficient authority in appropriate areas such that Glaeser is a supervisor who therefore should continue to be excluded from the bargaining unit.

Dated at Madison, Wisconsin, this 6th day of December, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

¹ See Article 22, Section C, Job Posting, of the collective bargaining agreement between Manitowoc County and the Manitowoc County Highway Department Employees, Local 986, AFSCME, AFL-CIO.