

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**CITY OF ABBOTSFORD**

Involving Certain Employees of

**CITY OF ABBOTSFORD**

Case 3  
No. 68402  
ME(u/c)-1257

**Decision No. 31935-B**

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**Appearances:**

**Christopher M. Toner**, Ruder Ware, Attorneys at Law, 500 First Street, Suite 8000, P. O. Box 8050 Wausau, Wisconsin, 54402-8050, appearing on behalf of the City of Abbotsford.

**Jill M. Hartley**, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters General Union Local 662.

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

On November 12, 2008, the City of Abbotsford filed a unit clarification petition, amended January 14, 2009, with the Wisconsin Employment Relations Commission asking that the Commission exclude the Assistant to the Administrator of Public Works and the Wastewater Supervisor from a non-professional City employee bargaining unit represented by Teamsters General Union Local 662.

A hearing on the petition was held in Abbotsford, Wisconsin on March 17, 2009 before Commissioner Paul Gordon. The City asserts, contrary to Local 662, that the Assistant is a supervisor and that the Wastewater Supervisor is supervisor and/or a managerial employee and a professional employee.

No. 31935-B

The parties submitted briefs and reply briefs, the last of which was received on June 19, 2009.

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 Abbotsford, herein the City, is a municipal employer which has principal offices at 203 East Birch Street, Abbotsford, Wisconsin.

2 Teamsters General Union Local 662, herein Local 662, is a labor organization serving as the collective bargaining representative of City employees in a bargaining unit described in the parties' 2008-2009 collective bargaining agreement as:

...all regular full-time public works and city hall employees, but excluding supervisory, managerial, confidential, executive, temporary, casual and seasonal employees, and all other employees of the City of Abbotsford.

3. The City has a Department of Public Works which consists of the Administrator of Public Works (herein Administrator or Director), the disputed position of Assistant to the Administrator of Public Works, two Public Works Operators, one Public Works Mechanic, the disputed position of Wastewater Supervisor, a Wastewater Operator and a Water Treatment Plant Operator. Currently all the employees in the Department of Public Works are included in the Local 662 bargaining unit with the exception of the Administrator of Public Works.

4. The incumbent in the position of Assistant to the Administrator of Public Works is Alan Uhlig. He has been employed by the City for over 25 years and has worked in his current capacity for approximately 15 years.

At the beginning of each work day, Uhlig meets with the two Operators and the Mechanic to discuss the day's known work assignments. Uhlig then meets with Administrator of Public Works Beil who provides Uhlig with additional work assignments for the day. Who performs which assignments is usually decided by consensus discussions among the Operators, the Mechanic and Uhlig but, if needed, Uhlig has the authority to make work assignments. Uhlig spends the vast majority of his time performing the same work as the Operators and generally does not check on the progress of work being performed elsewhere by Operators or by the Mechanic. For off hour assignments such as snow plowing, both the Director and the Assistant have called employees in to work.

The two Operators and the Mechanic are not formally evaluated.

Uhlig, the two Operators and the Mechanic have the standing authority to work small amounts of overtime to finish a project. The Administrator retroactively approves the overtime and also has the general responsibility of reviewing employee time cards.

The two Operators and the Mechanic give requests for time off to Administrator Beil for his approval.

5. The job description for the Assistant position reads:

#### ASSISTANT TO THE ADMINISTRATOR OF PUBLIC WORKS

Have day-to-day responsibilities of supervising and directing the work being done by the City crew. Implements and performs all projects and tasks as directed by the Administrator of Public Works. Has the necessary permits and certifications to supervise, operate, and maintain public roads and streets, City water and sewer lines, and all City Equipment.

In the absence of the Administrator of Public Works:

- Supervises the maintenance of public roads and streets.
- Supervises and schedules the daily duties of the City crew personnel in conformance with City Policies.
- Supervises the installation and maintenance of City storm sewers.
- Supervises the maintenance of City grounds and buildings.
- Maintains necessary permits required by the State in performing the duties of this office.
- Daily log required by City employees and computation done by him/her.
- Keep maintenance log on all equipment and vehicles.
- Supervises City Wide Brush pick-up.
- Supervises the City Park Maintenance and Operations.

6. The City has an Employee Handbook which covers, among other things, recruitment and employment. Section 2.02 reads as follows:

SCREENING OF CANDIDATES/HIRING PROCEDURES. The following shall be used in determining the screening, interviewing and hiring procedures:

1. PERMANENT FULL-TIME, PERMANENT PART TIME & SALARIED EMPLOYMENT.
  - a. the Finance and Personnel Committee shall screen all applications to determine a reasonable number of candidates to be interviewed.

- b. The Finance and Personnel Committee shall conduct the interviews, determine the most qualified candidates and recommend a candidate for hiring to the City Council.
- c. DPW, Asst. DPW, or Clerk/Treasurer shall participate in the above process, when it involves their department.

. . .

In the last approximately 20 years, there has been one hire into an Operator position in the Department of Public Works - which occurred in 2001 or 2002. In that instance, the Assistant offered his views to the Director that an employee who had been working temporarily should be hired permanently, but he did not participate in interviewing the employee. The Operators also informally recommended to the Director that the temporary employee be hired on a permanent basis. Director Beil successfully recommended to the Personnel Committee and the City Council that the temporary employee be hired on a permanent basis.

7. There have not been any DPW promotions, layoffs, recalls or transfers in the last 20 years.

8. The Assistant does not have the independent authority to discipline employees and has not done so. Discipline is imposed by the Administrator. The Assistant has reported work performance concerns to the Administrator but has not recommended any specific discipline in those circumstances. When the Assistant reports work performance issues, the Administrator conducts his own investigation and then determines how to proceed.

9. The Administrator normally has three weeks of vacation each year and is out of the office several other days each year for various meetings, schooling, conferences and other duties. During those times, the Assistant functions as the Director.

10. Assistant Uhlig started his employment with the City as a wastewater operator but when his abilities in concrete work, electrical and plumbing became known to the Administrator, he was moved to his current position and compensated based on those skills. Pursuant to the current collective bargaining agreement, Uhlig is paid \$21.63 per hour, the Mechanic is paid \$18.28 per hour and the two DPW Operators are paid \$17.00 per hour.

11. The City's Department of Public Works includes two employees who operate the City's wastewater treatment facility. The incumbent in the position of Wastewater Supervisor, herein the Supervisor, is Andrew Alexander, who has been in that position for approximately two years. He had previously held the other position in the Department- Wastewater Operator, herein the Operator. His current basic day-to-day job duties are to operate the wastewater treatment facility, perform and record lab tests, prepare reports for the Wisconsin Department of Natural Resources, and coordinate with industrial users of the wastewater treatment facility.

The job description for the Wastewater Supervisor position reads in pertinent part as follows and accurately describes his essential duties and the necessary qualifications:

#### WASTEWATER SUPERVISOR

- To supervise the operation and maintenance of Treatment Plant and its Lift Stations.
- To perform all of the Laboratory tests required for the wastewater Treatment Plant and Water Plant, including BOD, TSS, PH, Ammonia Nitrate, Phos., Sulfide, COD, Dissolved Oxygen, DNR Proficiency Tests, Glutamic Acid Checks, and other tests as required.
- Must keep and maintain all records as necessary including the operation and maintaining computer programs.
- Must be able to get reports such as: DMR, CMAR, and other DNR reports as required to the Department of Natural Resources.
- Reports directly to the Administrator of Public Works.
- Must keep daily; log of all duties performed.
- Performs other duties as assigned.
- Must obtain a Commercial Driver's License.
- Must maintain the buildings and grounds of the Wastewater Treatment and its lift stations.
- Must be able to work with computers and its programs such as: Microsoft Excel, Word, Microsoft Windows, and other computer programs.
- Must have a Wastewater DNR Certification with subclasses: 3-A,B,F,G,J and I.
- To perform weekend duties in water, sewer, street, etc.
- Has required Wisconsin DNR Licenses.

12. The Wastewater Operator is a maintenance and operational employee. Having formerly been in that position, the Supervisor trained the Operator in his work tasks. The Operator basically maintains equipment on a scheduled basis and makes plant operational

adjustments as directed by the Supervisor. The Operator's schedule of tasks is regular and routine, but altered by the Supervisor at different times because of different duties that have to be performed, particularly testing. The Supervisor gives him directives outside the normal routine of duties several times each week. It normally takes a couple of minutes for the Supervisor to give these directives. The Supervisor will direct the Operator to use certain levels of chemicals or use certain flows or levels to perform various tests and procedures. If tests indicate adjustments need to be made, the Supervisor makes those adjustments or tells the Operator do so. The Operator does not make the adjustments on his own without contacting the Supervisor. The Administrator does not give directions to the Operator on duties at the wastewater treatment plant, but does occasionally direct him to perform other non-wastewater duties.

13. The Supervisor reviewed resumes and participated in interviews when the current Operator was hired. The interview committee discussed the candidates and reached a consensus as to the person to be recommended to the City Council for hire. The Council accepted the consensus recommendation.

14. The Supervisor has not disciplined anyone and his disciplinary authority has never been discussed with him. He does not have independent disciplinary authority beyond issuance of a verbal reprimand. If the Operator were to engage in misconduct, the Supervisor would inform the Director who would conduct his own investigation and then make his own decision as to any disciplinary action.

15. The Supervisor and the Operator each fill out their own time cards and turn them in to the Director. The Supervisor does not review the Operator's time card. They do coordinate with each other on when each will take vacations or other time off. They then inform the Director who does not alter their proposed absence as long as the plant is covered and the jobs get done.

16. The Supervisor does not do performance evaluations of the Operator.

17. The Supervisor is paid more than the Operator. The Supervisor is paid \$22.66 per hour, which is comparable to other Grade 4 operators with similar duties. The Operator, who does not have a Grade 4 certification, is paid \$17.00 per hour.

18. The Supervisor has Associate degrees in both Applied Science and Wastewater Purification Technology from Bay De Noc Community College. He had internships at a wastewater plant and at a water plant in Escanaba, Michigan. He is the only person in the City to hold a Grade 4 DNR plant operation certification, or license, which signifies four years of experience in a Grade 4 plant with the commensurate test being passed. He previously worked at a Grade 4 plant in Marshfield for about five years. He needs 24 continuing education credits each three years to maintain his Grade 4 license. The two Associate degrees he has are not necessary or required in order to become a Grade 4 operator. Those degrees do help in preparation for the test that must be passed before getting a Grade 4 certification. No degree is

required to be able to take the Grade 4 test, work in a treatment plant or eventually get the necessary license or certification. The Supervisor's degrees help but are not necessary for him to do the various plant testing and report preparation involved in his job, or for any of the work he does on a day-to-day basis. It is the Grade 4 certification that is needed to perform certain aspects of the work, rather than knowledge customarily acquired through a four year specialized degree.

The Supervisor does daily, weekly and other tests for various purposes and makes daily, quarterly and yearly reports. To be trained to perform these tests is fairly simple, understanding them is more difficult. The Director reviews the reports and is required by permit to sign them before they are sent to the DNR.

19. Currently the wastewater treatment plant in the City is undersized because industry is producing more waste than the plant can process, the plant does not meet all requirements, and thus there will probably be a complete change in its process with possible expansion. The Supervisor participates in negotiating amendments to user agreements, particularly when DNR standards which the City must meet are changed. These negotiations involve, on the City's part, a private wastewater engineer hired by the City, the Director of Public Works, the Supervisor, and a lawyer. The City is doing a facilities plan study to determine its future needs, and the Supervisor is involved in discussions of cost, capacity and needs along with the City Engineer. Everything that the Director and City Engineer base the new facility plan off of comes from the Supervisor's data and information. The Supervisor communicates with them about the various processes that are being considered for the plant. He gives them the information and they use that information to design plant upgrades. If a new industry were to inquire as to locating in the City, the Supervisor would give the Administrator advice on whether or not the new industry capacities should be taken. On operational methods and future plant improvements, the Supervisor provides information to the Director and Engineer, but he does not make policy decisions. He does not set levels of service.

20. The Supervisor has spending discretion of up to \$500.00. For spending over \$500.00, he always speaks with the Administrator before proceeding. On larger maintenance issue or emergencies, he consults with the Administrator before obtaining any necessary outside services. The Director generally agrees with the Supervisor's analysis on spending matters. The Supervisor does not have input in the budget process. He spends monies within the budgeted amount unless the Director has otherwise authorized.

21. The Supervisor participates in weekly management meetings where various City departments inform each other on what is going on in their department.

22. The Wastewater Supervisor does not possess supervisory authority in sufficient combination and degree to be a supervisor.

23. The Wastewater Supervisor does not sufficiently participate in the formulation, determination and implementation of management policy or have sufficient authority to commit the City's resources to be a managerial employee.

24. The knowledge needed to perform the Wastewater Supervisor's work is not customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

25. The Assistant to the Administrator of Public Works does not possess 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

### **CONCLUSIONS OF LAW**

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

2. The Wastewater Supervisor is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., is not 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.

3. The Wastewater Supervisor is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats.

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



**ORDER CLARIFYING BARGAINING UNIT**

The Assistant to the Administrator of Public Works and the Wastewater Supervisor shall continue to be included in the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 30<sup>th</sup> day of October, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Commissioner Judith Neumann did not participate.

**CITY OF ABBOTSFORD**

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

The City contends that the Assistant to the Administrator of Public Works is a supervisor, that the Wastewater Supervisor is supervisor and/or managerial employee and a professional employee, and thus that both employees should be excluded from the bargaining unit. The supervisory status of the Assistant and the Supervisor will first be considered.

A supervisor is defined in Sec. 111.70(1)(o)(1) Stats. as follows:

. . .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.

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 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 skills or for his/her supervision of employees;
5. Whether the supervisor is 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. CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97).

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 are present in sufficient combination and degree to warrant finding an employee to be a supervisor. WALWORTH COUNTY, DEC. NO. 29378 (WERC, 5/98).

We will apply the foregoing first to the Assistant.

### **ASSISTANT TO THE ADMINISTRATOR OF PUBLIC WORKS**

As to Factor 1 on hiring, the City has a policy which potentially places the Assistant directly in the resume review, interview, and committee recommendation process. It is also clear that the Director holds the Assistant in very high regard as a trusted, competent and valuable City employee with good judgment. However, on the sole occasion of a new Operator hire within the last 20 years, a person working temporarily was then hired permanently without the Assistant doing any resume review, interviewing, committee participation or recommendation to the City Council. While the Assistant did give his positive view on the permanent hire to the Director, it is clear that the Assistant's role in the hiring process is far short of an effective recommendation.

Factor 1 also considers discipline and discharge. The Assistant has no independent authority to discipline and has not disciplined any employee. The Assistant does provide information regarding employee performance issues to the Director but the Director then conducts his own investigation and independently decides how to proceed. While the Director would weigh heavily any recommended discipline proposed by the Assistant, the fact that the Director would conduct his own investigation and thus independently determine whether misconduct even occurred persuades us that the Assistant does not have the authority to effectively recommend discipline.

There have not been any recent transfers, promotions, lay offs or recalls to consider as part of a Factor 1 analysis.

Concerning Factor 2, the Assistant does have the authority to direct and assign the work of the Operators and the Mechanic but often does not need to exercise that authority. The employee are experienced and efficient, and know their jobs well. Many of the tasks are programmatic and routine. Often the crew and the Assistant decide among themselves on a consensus basis who while do what, as opposed to being assigned by the Assistant. Some tasks are done on a rotating basis. Occasionally, the Director himself makes a specific work assignments. The Director also receives and approves employee leave requests.

As to Factor 3, the Assistant directs the work of three employees and the Director has greater supervisory authority than the Assistant over these employees.

Considering Factor 4, the Assistant is paid about \$3.35 per hour more than the Mechanic, and \$4.63 more than the Operators. The record satisfies us that this wage

differential is based, in large part, on his cement, plumbing and electrical abilities, the higher wage he had at the time collective bargaining first began to establish employee wage rates and his paperwork and record keeping responsibilities that other employees do not have. Thus, we are persuaded that the difference in pay is based to a considerable degree on his skills, seniority and miscellaneous duties rather than the exercise of supervisory responsibilities.

Turning to Factor 5, given his lack of hiring and disciplinary authority and the limited time he spends checking on the work of employees who are not in his physical presence, we conclude the Assistant is primarily supervising activities rather than employees.

As to Factor 6, it is clear that the Assistant spends the vast majority of his time doing the same work as the DPW Operators, working with them side by side on their activities.

For Factor 7, the Assistant does exercise some independent judgment on those occasions that he assigns work to employees. However, much of independent judgment exercised by the Assistant is not related to the actual supervision of employees. Thus, while the Assistant has some authority to authorize independent contractors to perform needed work discovered on projects, this type of judgment has no supervisory implications because the contractors are not employees of the City.

Considering all the foregoing, we conclude the Assistant is not a supervisor. He lacks any significant authority in the critical areas of hiring and discipline, directs the work of a small number of employees and spends most of his time doing the same work as other bargaining unit employees.

In reaching this conclusion, we have considered the City's reference to SHEBOYGAN COUNTY, DEC. NO. 8256-L (WERC, 4/08) but do not find it to be persuasive. The disputed employee in that case had significant independent disciplinary authority and she did not spend a significant portion of her day performing the same activities as the employees supervised. Similarly, the City's citation to CITY OF FOND DU LAC, DEC. NO. 8168-D (WERC, 7/98) is not persuasive because, unlike the Assistant, the disputed employee was found to effectively recommend discipline and would play a significant role in any hiring decision. CITY OF JEFFERSON, DEC. NO. 10344-A(WERC, 3/85) and WATERFORD SANITARY DISTRICT No. 1, DEC. NO. 30214 (WERC, 9/01) are also distinguishable because the disputed employees found to be supervisors in those cases again had significant hiring and disciplinary authority-unlike the Assistant.

Given all of the foregoing, the Assistant will continue to be included in the bargaining unit.

### **WASTERWATER SUPERVISOR**

We next consider whether the Wastewater Supervisor is a supervisor under the same standards and factors.

As to hiring portion of the Factor 1 analysis, the Supervisor participated in the hiring of the Operator through interviews and a recommendation process. His recommended candidate was hired. However, the successful recommendation was a consensus among all the members of the committee and members of the City Council actively participated in the process. Under these circumstances, we conclude the Supervisor's role in the hiring process does not rise to the level of an effective recommendation.

As to discipline under Factor 1, the Supervisor's independent disciplinary authority is limited to issuance of a verbal warning. If he observed misconduct by the Operator, he would report it to the Director for action. His input would certainly be considered by the Director, but we are convinced that the Director would independently investigate the matter and then determine what, if any, discipline should be imposed. Thus, as was true for the Assistant, we conclude that the Supervisor does not effectively recommend discipline.

There is no evidence as to any transfers, promotions, layoffs or recalls to consider as part of the Factor 1 analysis.

As to Factor 2, the Supervisor does direct the Operator as to when and how to test or make adjustments in the various plant operating systems. This is in the context of the Operator having a routine set of duties which must be frequently altered for specific tests, and adjustments made to bring the plant into certain operating levels determined by the Supervisor.

As to Factor 3, the Supervisor directs the work of one employee and the Director of Public Works has more supervisory authority over the Operator than does the Supervisor.

Concerning Factor 4, the Supervisor is paid \$5.66 per hour more than the Operator. The Supervisor has a higher grade certification and license than the Operator and there is persuasive evidence that his pay level is consistent with the compensation received by individuals who possess a Grade 4 certification. Thus, we conclude the Supervisor's compensation primarily reflects his skills and knowledge rather than his alleged supervisory status.

Under Factor 5, given his lack of disciplinary authority and the minimal time spent directing the Operator's work, we conclude the Supervisor is primarily supervising an activity rather than an employee. We additionally note in this regard that the Supervisor does not review the Operator's timecard or formally evaluate the Operator's job performance.

As to Factor 6, the Supervisor's work responsibilities differ from the Operator's but do include some overlap as to testing.

As to Factor 7, the Supervisor does exercise independent judgment in determining when, how and what tests will be done by the Operator.

Considering all of the foregoing, we conclude the Supervisor is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats. He has virtually no disciplinary authority, spends little time directing the work of only one employee and his hiring role falls short of an effective recommendation. In reaching this conclusion, we have again considered the cases cited by the City including the City's citation of WATERFORD SANITARY DISTRICT NO. 1, where a wastewater treatment supervisor of one employee was found to be a supervisor. In that case, however, the supervisor not only had authority to effectively recommend hiring, but also had authority to discipline. Those factors are absent here. That supervisor also had authority to authorize overtime and had conducted performance evaluations. Clearly WATERFORD is distinguishable from this case. We have again considered CITY OF JEFFERSON in reaching our conclusion. However, as previously discussed, in JEFFERSON, the supervisor had some disciplinary authority, was more extensively involved in the hiring process, directed the work of two employees and had the authority to adjust their grievances. Compared to the Supervisor here, the supervisor in JEFFERSON had much more supervisory authority.

We turn now to the City's contention that the Supervisor should be excluded from the bargaining unit because he is a managerial employee.

In MILWAUKEE V. WERC, 71 Wis. 2D 709, at 716 (1976), the Wisconsin Supreme Court affirmed the Commission's definition of managerial employees as:

. . . those who participate in the formulation, determination and implementation of management policy or possess effective authority to commit the employer's resources.

The Court went on to discuss why the policy component of the Commission's managerial definition was consistent with the Municipal Employment Relations Act. The Court stated at 717 the following:

The exclusion of management personnel, as well as certain other categories, such as supervisors and executives, indicates that not all municipal employees are to have the benefit of dispute resolution through collective bargaining. However, the ability of a certain category of employees to effectuate and implement management policy does not necessarily indicate that they should be precluded from protection by the statute. The definition that has been formulated by WERC effectively distinguishes those categories of employees whose interests are shared by persons engaged in a managerial capacity from those categories who are otherwise employed. By defining the managerial exclusion so as to encompass those who formulate and determine policy, as well as implement it, WERC formulated a definition which is consistent with the purposes of the Act and the legislatively expressed intent to exclude managerial employees.

Thus, it is clear that to be a managerial employee based on one's policy role, the employee must "formulate and determine policy, as well as implement it." Thus, for instance, applying this policy test for managerial status in *EAU CLAIRE COUNTY V. WERC* 122 Wis. 2D 363 (1984), the Court of Appeals concluded that a register in probate was not a policy-based managerial employee because the circuit court had final approval over all of the position's activities.

Lastly, it is important to emphasize that not all policy determinations qualify an individual as a managerial employee. Consistent with the purpose of the managerial exclusion as one which serves to distinguish individuals whose interests are distinct from those employees in the bargaining unit, policy making must be at a "relatively high level" to warrant managerial status. *TAYLOR COUNTY, DEC. NO. 24261-E (WERC, 7/97)*.

As noted above, the second path to managerial employee status involves the effective authority to commit the employer's resources. In *KEWAUNEE COUNTY V. WERC*, 141 Wis. 2D 347, at 355, (1987), the Court of Appeals affirmed the Commission's determination that "effective authority to commit the employer's resources" at a managerial level means possessing:

. . . the discretionary power to determine the type and level of services to be provided the manner and means by which those services will be delivered and involves: . . . determining the services required, the number of persons necessary to deliver those services, and the quantity and type of equipment and supplies required to provide those services.

Applying the managerial standard related to committing the City's resources, the Supervisor does not qualify as a managerial employee. The Supervisor does not participate in developing a budget. He does not thereafter allocate funds for different programs or purposes from those in the original budget. He does not commit resources which change the direction of the City's treatment plant operations. He does have discretion to spend within his budget, but is making ministerial choices as to the purchase of chemicals and equipment. He has some discretion as to where he might obtain capital equipment, such as pumps or motors, but does so within a budget and makes those purchases to keep the larger system operational, not to develop a new system. He has a \$500.00 limit on discretionary spending, the same as several other members of the bargaining unit.

On the policy prong of the managerial issue, the Supervisor implements but does not make policy. He does participate with the Director, City Engineer, lawyer and others in formulating plans to upgrade the treatment plant. He does not thereby make policy decisions. Those are formulated and decided at a higher level. He does not set rates or test standards. He does not set the levels of service that will be provided or determine how many City employees will provide service.

Given all of the foregoing, we conclude that the Supervisor is not a managerial employee.

Lastly, the City seeks to have the Supervisor excluded from the non-professional bargaining unit on the basis that he is a professional employee.

Section 111.70(1)(L), Stats., defines a “professional employee” as follows:

1. An employee engaged in work:
  - a. Predominantly intellectual and varied in character as opposed to routine mental, manual mechanical or physical work;
  - b. Involving the consistent exercise of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, manual or physical process; or
2. An employee who:
  - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d.;
  - b. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in subd. 1.

All of the criteria in 1 or 2, above, must be present for an employee to be deemed professional. CHIPPEWA VALLEY TECHNICAL COLLEGE, DEC. NO. 22230-A (WERC, 5/88). We have generally interpreted the Sec. 111.70(1)(L)1.d., Stats., criterion of “a prolonged course of specialized intellectual instruction and study” as being met by a four-year specialized degree. CITY OF STEVENS POINT, DEC. NO. 30941 (WERC, 6/04); MATC, DEC. NO. 6343-D (WERC, 10/89). The educational background of incumbents may be relevant in determining the manner in which the knowledge required to do the work is generally acquired, but the statutory definition focuses on the nature of the work that the employee performs and how the



knowledge needed to perform that work is “customarily acquired.” While job descriptions can be relevant evidence as to the nature of the work involved and the customary source of the knowledge needed to perform same, they are only one form of such evidence and must be considered along with the balance of the record in determining the actual nature of the work and the knowledge needed to perform it. OUTAGAMIE COUNTY, DEC. NO.. 21143-A (WERC, 10/86).

The City correctly argues that the statute does not require that the employee hold a four year specialized college degree to be found professional. Thus, in OUTAGAMIE COUNTY, DEC. NO. 21143-A (WERC, 10/86) and SUN PRAIRIE, DEC. NO. 20841-B (WERC, 10/86) for example, the Commission found that although the incumbents did not possess a degree, the required knowledge was of the type customarily acquired through social work and engineering degrees, respectively and therefore satisfied the Sec. 111.70(1)(L)1.d. test.

Applying the above criteria, we conclude the Supervisor is not a professional employee. We reach this conclusion because the knowledge needed to perform the work is not customarily acquired through a four year specialized degree. Instead, the record persuades us the knowledge needed is customarily acquired through the study and experience needed to obtain the appropriate DNR certification level.

The City does not cite any cases where a similar wastewater treatment plant employee has been found to be professional, but does cite CITY OF WAUWATOSA, DEC. NO. 21145 (WERC, 11/83) where two Sanitarians that did not have four year specialized degrees were found to be professional employees. However, in that case the duties and responsibilities were of a much broader scope and a four year specialized degree requirement was present. The Commission was persuaded that the knowledge needed to perform the work in question was customarily acquired through a four year specialized degree. Here, it is clear a the knowledge needed to perform the Supervisor’s work is not customarily acquired through such a degree.

Given all of the foregoing, the Supervisor will continue to be included in the bargaining unit.

Dated at the City of Madison, Wisconsin this 30th day of October, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Commissioner Judith Neumann did not participate.