

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
GENERAL TEAMSTERS UNION LOCAL 662

Involving Certain Employees of
GLENWOOD CITY

Case 1
No. 67085
ME-4134

Decision No. 32214-B

Appearances:

Tim Wentz, Business Agent, P. O. Box 86, Eau Claire, Wisconsin 54702 and **Nathan Eisenberg**, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of General Teamsters Union Local 662.

William P. Nickolai, Bakke & Norman, Attorneys at Law, 990 Main Street, P.O. Box 54, Baldwin, Wisconsin 54002-0054, appearing on behalf of the Glenwood City.

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

On October 29, 2007, General Teamsters Union Local 662 was certified as the collective bargaining representative of all regular full-time and regular part-time employees of Glenwood City, excluding employees with the power of arrest, supervisors, managerial and confidential employees. However, the parties were unable to resolve a dispute over whether David Booth, Director of Public Works, is a supervisor.

Hearing on that dispute was held on November 28, 2007 in Glenwood City, Wisconsin by Examiner Peter G. Davis and the parties thereafter filed written argument by January 14, 2008.

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

No. 32214-B

FINDINGS OF FACT

1. Glenwood City, herein the City, is a municipal employer providing various service to its residents.

2. General Teamsters Union Local 662, herein the Union, is a labor organization that serves as the collective bargaining representative of all regular full-time and regular part-time employees of Glenwood City, excluding employees with the power of arrest, supervisors, managerial and confidential employees.

3. The City has a Department of Public Works which consists of six employees/positions: full-time employee Director of Public Works David Booth (a 30 year employee paid \$18.27 per hour), full-time employee Mike Norenberg (an 18 year employee paid \$15.64 per hour), a currently vacant position formerly held by full-time employee Theresa Kopacz (then paid \$13.50 per hour) which may become a regular part-time position, a regular part-time (26 hours a week-paid \$9.50 per hour) recycling employee who holds a position that formerly was full-time, and two part-time employees who work Saturdays at the recycling center (paid \$9.50 per hour).

When the formerly full-time recycling position became vacant, the City decided (based in part on input from Booth) to reduce the position to regular part-time. Booth then effectively recommended that a part-time Saturday only recycling employee fill the regular part-time recycling position.

Full-time employee Mike Norenberg and the regular part-time recycling employee are in the Teamster-represented bargaining unit.

4. Booth is responsible for and exercises independent judgment when assigning and scheduling the work tasks of the other Department employees. Although he spends the vast majority of his time performing various public works duties, he is responsible for the job performance of other Department employees and regularly (three days out of five) checks on said performance. If employees are going to miss work due to illness, they leave a phone message with Booth.

5. Booth reports directly to the Mayor and attends City Council meetings to report on current public works projects, answer questions and make recommendations as to future projects.

6. Booth has effective authority to hire and fire any part-time Department employees. Booth does not have effective authority to hire or impose any significant discipline as to any full-time Department employees. Booth has historically participated in the evaluation of full-time Department employees.

7. Booth 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

Director of Public Works David Booth is a supervisor within the meaning of Sec. 111.70(1) (o) 1, Stats.

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

ORDER

Director of Public Works David Booth shall continue to be excluded from the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of March, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Commissioner Paul Gordon did not participate.

GLENWOOD CITY

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

The issue before us is whether Director of Public Works Booth is a supervisor.

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 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 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 workforce;
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 alleged supervisor is paid for his/her skill or for his/her supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

See TOWN OF BROOKFIELD, DEC. NO. 26426 (WERC, 4/90).

Not all of the factors above need to reflect supervisory status for us to find an employee to be a supervisor. Rather, the inquiry in each case is whether the factors are present in sufficient

combination and degree to warrant the conclusion that the employee in the disputed position is a supervisor. CITY OF GREEN BAY, DEC. NO. 31417 (WERC, 8/05).

As to Factor 1, the testimony of the Mayor and Alderperson Degross persuades us that Booth has the effective if not independent authority to hire and fire any part-time Department of Public Works employee-which at present includes the regular part-time bargaining unit recycling employee and the two Saturday-only recycling employees not in the bargaining unit. In addition, the evidence as to how the current regular part-time recycling employee came to fill that position establishes that Booth has the effective authority to transfer/promote part-time employees.

As to the one current full-time employee, the record establishes that Booth does not have the effective authority to hire or fire that employee. Booth's recommendation would be part of the City Council's decision-making process but, as was true when a then full-time recycling employee was hired, the Council would feel free to override his recommendation. As to any full-time employee, the Council has retained effective control over hiring or serious discipline.

As to Factors 2 and 7, Booth has and exercises independent authority to direct and assign the work of other Department employees. He determines what the other full-time Department employee will do each day and what duties the regular part-time recycling employee will perform during that limited portion (5 hours) of his 26 hours work week when he is not assigned to the recycling center.

As to Factor 3, Booth is the only employee who directs the work of the 4 currently filled Department positions. Booth reports directly to the Mayor.

As to Factor 4, the most meaningful comparison of pay levels is between the only two full-time employee currently in the Department. Booth (a 30 year employee) is paid \$2.63 per hour more than the 18 year employee whose work he directs. From the record, we are persuaded that some of that pay differential is due to Booth's greater longevity but that part is also based on his responsibilities as department head-including the supervision of employees.

As to Factors 5 and 6, Booth generally does not work directly with other Department employees but regularly (3 days a week) spends a portion of his work day traveling to the work site of other Department employees to monitor their work.

Considering all of the above, we conclude that Booth is a supervisor within the meaning of Sec. 111.70 (1) (o) 1, Stats. While he has substantial independence when directing the work of the other Department employees, it is his essentially independent hiring and firing authority over part-time employees (including one bargaining unit position) which persuades us that he is a supervisor. It is this authority which significantly distinguishes Booth from the individuals in

the cases cited by the Union (CITY OF SUN PRAIRIE, DEC. NO. 20841-B (WERC, 10/86); TOWN OF SHARON, DEC. NO. 31143, (WERC, 10/04); VILLAGE OF STODDARD, DEC.

NO. 27358 (WERC, 8/92) where we found employees without hiring and firing authority to be lead workers rather than supervisors. While we acknowledge that Booth lacks effective authority to hire or fire the full-time employee, his hiring and firing authority over the part-time Department employees is sufficient to warrant a finding of supervisory status.

Given our determination that Booth is a supervisor, he shall continue to be excluded from the Teamster bargaining unit.

Dated at Madison, Wisconsin, this 26th day of March, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Commissioner Paul Gordon did not participate.

