



If so, what is the appropriate remedy?

Is the non-bargaining unit position supervisory?

RELEVANT CONTRACT PROVISIONS

ARTICLE 1 - RECOGNITION

Section 1. The Employer hereby recognizes the Union as the exclusive bargaining agent for the purpose of conferring and negotiating on questions of wages, hours, conditions of employment and the adjustment of employee complaints and employee grievances for all regular full-time and regular part-time employees of the Jackson County Highway Department, excluding supervisory, managerial, clerical and confidential employees.

. . .

ARTICLE 2 - MANAGEMENT RIGHTS

SECTION 1. The County possesses the sole right to operate County government and all management rights repose in it, but such rights must be exercised consistently with the provisions of this Contract. These rights, which are normally exercised by the Employer, include, but are not limited to, the following:

- A. To direct all operations of County government.
- B. To . . . assign . . . employees in positions with the County . . .
- E. To introduce new or improved methods or facilities.
- F. To change existing methods or facilities . . .
- H. To determine the methods, means and personnel by which such operations are to be conducted . . .

The Union and the employees agree that they will not attempt to abridge these management rights and the County agrees that it will not use these management rights to interfere with the rights established under this agreement .

. .

ARTICLE 7 - JOB POSTING

SECTION 1. When it becomes necessary to fill vacancies or new positions within the bargaining unit, the Employer will post such vacancies or new positions for five (5) working days, during which time interested employees may apply by signing the posting. Job postings shall state the job to be filled, qualifications for the job and the rate of pay  
. . .

ARTICLE 8 - HOURS OF WORK

SECTION 1. The regular work week shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, 7:00 a.m. to 3:30 p.m.  
. . .

SECTION 3. Employees shall receive time and one-half (1 1/2) compensation for all work performed over forty (40) hours per week or eight (8) hours per day . . .

SECTION 6. Employees who are called in to work outside of the regular work week shall receive a minimum of one and one-half (1 1/2) hours of compensation at time and one-half.

ARTICLE 9 - VACATIONS

SECTION 2. The number of employees on vacation at any time shall be determined by the Commissioner or his/her designee. Choice of vacation time shall be requested in writing as far in advance as possible. Employees must give a minimum of three (3) work days notice for vacation time of five (5) days or less. Ten (10) calendar days notice must be given for vacations lasting more than five (5) days. Each employee shall post his/her vacation request on the union bulletin board and within three (3) days thereof an employee of greater seniority within that respective seniority unit may claim part or all of the vacation time requested, and the less senior employee

may have to select a different vacation period if simultaneous vacation periods cannot be granted by the Commissioner or his/her designee. Exceptions to the time limits may be granted upon approval and in the sole discretion of the Commissioner or his/her designee.

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JACKSON COUNTY HIGHWAY DEPARTMENT

EXHIBIT A - WAGES

Section 1. Effective July 1, 1992, the wage schedule shall be as follows:

		<u>Start</u>	<u>6 Month</u>	<u>18 Month</u>
Range 1	Laborers	\$9.28	\$9.72	\$10.02
Range 2			. . .	
	Patrolman	9.43	9.87	10.17
			. . .	
Range 5	Foreman	10.35	10.94	11.19
			. . .	

JACKSON COUNTY HIGHWAY DEPARTMENT

EXHIBIT A - WAGES

Section 1. Effective January 1, 1993, the wage schedule shall be as follows:

		<u>Start</u>	<u>6 Month</u>	<u>18 Month</u>
Range 1	Laborers	\$9.49	\$9.93	\$10.23
Range 2			. . .	
	Patrolman	9.64	10.08	10.38
			. . .	
Range 5	Foreman	10.56	11.15	11.40
			. . .	

JACKSON COUNTY HIGHWAY DEPARTMENT

EXHIBIT A - WAGES

Section 1. Effective July 1, 1993, the wage schedule shall be as follows:

		<u>Start</u>	<u>6 Month</u>	<u>18 Month</u>
Range 1	Laborers	\$9.70	\$10.14	\$10.44
Range 2			. . .	
	Patrolman	9.85	10.29	10.59

. . .

Range 5	Foreman	10.77	11.36	11.61
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BACKGROUND

LeRoy Olstad submitted the following letter, headed "SUBJECT: Voluntary Step-down form Foreman's position" and dated May 7, 1992, to Highway Commissioner Michael L. Hemp:

Due to health and personal reasons I, LeRoy Olstad, after numerous years as Foreman for Jackson County Highway Department, wish to voluntarily step down from Range 5 Foreman to Range 2 Light Equipment. This request is made without any undue duress or coercion.

I agree to stay on as Foreman as requested until a suitable replacement is found.

Hemp accepted Olstad's resignation the same day.

The County did not, however, fill Olstad's position as Foreman. Instead, the County Highway Committee, on July 6, 1992, created a position called Temporary Crew Supervisor. On July 7, 1992, the Highway Committee placed Donald Olsen, a Patrolman, into the position of Temporary Crew Supervisor. The Highway Committee denominated the Temporary Crew Supervisor position as a "non-union position". The County ultimately advertised the regular full-time position which supplanted the position of Temporary Crew Supervisor as "the newly created non-union position of Crew Supervisor." The job description for the position reads thus:

CREW SUPERVISOR

Under the supervision of the Commissioner and Patrol Superintendent, supervises and directs the activities of employees performing road maintenance, sealcoating, paving and other work.

MAJOR DUTIES AND RESPONSIBILITIES

1. Assigns work to, and supervises, individuals or crews performing maintenance on state, county or town roads, including paving, patching,

grading, ditching, snowplowing or related work.



2. Keeps Commissioner and Patrol Superintendent informed of progress on projects, equipment needs, or need for additional employees. Requisitions materials for job.
3. Instructs employees in equipment operation when necessary, stressing on-the-job safety procedures. Insures that employees wear protective safety equipment provided.
4. Supervises, or places, the proper traffic warning devices to protect motorists and employees in construction areas, and during maintenance operations.
5. Assists with, or supervises, paving, shouldering, brushing or crack filling.
6. Prepares daily reports, including time cards, and records of labor costs, machinery and materials. Prepares on-the-job injury reports if required.
7. Performs special assignments as directed by the Patrol Superintendent.
8. Alternates being on call with other staff members.
9. Supervises road crews with authority to reprimand and authority to participate in and make recommendations with respect to hiring and firing.

DESIRABLE TRAINING AND EXPERIENCE

1. High school graduate, or GED equivalent, and substantial experience in highway maintenance and construction.
2. Some prior supervisory experience is desirable but not essential.
3. Ability to plan and supervise the work of others.
4. Knowledge of road, bridge and highway maintenance and construction, and the

operation of road machinery and equipment.

5. Must be able to respond quickly in case of snowstorms or other emergencies.

Olsen was eventually selected as the Crew Supervisor.

The Union filed the grievance as a "class action" on July 8, 1992. The grievance listed the "applicable violation" as Article 7, Section 1, and "any other articles that may be applicable". The grievance notes the County's "not posting foreman's position" as the basis for the grievance.

Olsen and Hemp testified regarding the duties of the Crew Supervisor. Hemp noted that the County had not filled the Foreman position vacated by Olstad, and was not likely to in the near future. He noted that the duties formerly assumed by Olstad were either being performed by other employees or were no longer being performed. He stated the County Board reorganized the structure of the Highway Department to make it more efficient. Hemp noted that he has more paper-work type duties than his predecessor, and thus had only the Patrol Superintendent, Bob Gabriel, available to supervise all the field work performed by the department. The County Board approved the creation of a non-unit Crew Supervisor to address this need.

The County employs forty-two employees in its Highway Department. Two of those employees are clerical employees, three of those employees (Hemp, Gabriel and Olsen) are non-bargaining unit employees and the remaining thirty-seven are members of the bargaining unit.

Hemp noted that Olsen plays no role in the hiring of non-unit applicants for bargaining unit positions. Any future role played by Olsen in that process would be at the discretion of the Highway Committee, and would come at the interview level, where Olsen's opinion on an applicant's ability could conceivably be sought. Olsen's role in the internal hiring process by which vacancies in unit positions are filled by a unit member is evolving, but limited. The creation of a job description for any such vacancy would be handled by Hemp and the Personnel Director, subject to approval by the County Board. The position would be posted after such approval. Article 7, Section 1, of the parties' labor agreement requires such positions to be awarded to "(t)he qualified applicant with the most seniority". Hemp stated that he would consult Olsen for a recommendation on the qualifications of the internal applicants. No employee has been hired through this process during Olsen's tenure as Crew Supervisor.

The County has written forms for the issuance of discipline to unit employes. Olsen and Gabriel each keep copies of these forms in their files. Oral warnings are not documented. Olsen has not formally disciplined any employe, but has counseled one employe on a performance based concern. Olsen and Hemp each testified that Olsen can issue a written warning or a suspension without prior consultation with Hemp. Olsen noted that discharging an employe would be beyond his authority. Hemp noted that he would seek Olsen's recommendation in a discharge situation, but that the ultimate decision would be his.

Prior to Hemp's arrival as Commissioner, the County did not conduct performance evaluations of its Highway Department employes. Up to the time of hearing, Gabriel was responsible for evaluating all unit employes. Olsen, upon completion of his probation period, will be responsible for evaluating, on an annual basis, those employes responsible for maintenance of County roads.

Olsen reports for work at 6:00 a.m., and, in consultation with Gabriel, determines the duties to be performed by unit members. He customarily works until 3:30 p.m. Olsen makes out individual work sheets for the employes he oversees. Most of the employes whose work he assigns will learn their duties off of this work sheet. He will typically assign work directly to only two to three employes per shift. After unit employes leave the shop, Olsen reviews any time records which have to be submitted to the payroll department, and reviews the status of ongoing and contemplated projects to assure that work for several days in advance is ready for assignment. Although work projects may extend over several days or weeks, Olsen prepares a work sheet for each employe every day. Employes supervised by Olsen call him for the approval of time off. He approves sick leave and vacation requests without consulting with Hemp or Gabriel. Olsen approves overtime and can assign employes to work through break time. He does so without necessarily consulting Hemp. Olsen is authorized to call in employes on emergency overtime to clear roads after storms. He does so without consulting Hemp, although his discretion is guided by a written policy developed by Hemp, Olsen and Gabriel. On the day of the hearing, Olsen called in and assigned work to ten unit employes, prior to their regular starting time.

Gabriel and Olsen report directly to Hemp. Gabriel is paid by the State of Wisconsin, and has authority over unit employes who work on State and on County roads. Olsen directly oversees the work of roughly eighteen employes, each of whom work primarily on County roads. Hemp and Gabriel may oversee the work of these employes, but typically do not. Olsen oversees the work of multiple job-sites. The primary, on-site oversight of employes' work is done by Gabriel and Olsen. Olsen is responsible for

accounting for the hours worked by these employes, and submits his time sheets directly to payroll, without consulting Gabriel or Hemp.

The County advertised the position of Crew Supervisor as "a salaried position with a salary range of \$25,000 - \$29,000, starting at \$25,000 and increasing to \$26,000 after a one year probationary period." Olsen does not receive any premium payment for working beyond his customary hours. He may, however, receive comp time for such hours, earned at a "straight-time" rate.

Olsen estimated he spends roughly one-fourth of his time in contact with unit employes. Of that time, roughly one-half is spent overseeing work in progress with the remaining time spent in work-assignment related duties. Olsen does not perform any work performed by unit employes, and does not work alongside the employes whose work he oversees.

Olsen is authorized to contract work out to private contractors, and orders materials for work projects. He may or may not consult Hemp when doing so. Olsen shares on-call duties with Hemp and Gabriel.

The County did not maintain a job description for the Foreman position Olstad resigned from. Olstad, as Foreman, worked alongside a single work crew on a single project, and served as the lead worker of that crew. Olstad did not order materials, while serving as Foreman. Olstad did not independently discipline unit members, but could recommend such discipline.

Further facts will be set forth in the DISCUSSION section below.

#### THE PARTIES' POSITIONS

##### The Union's Initial Brief

After a review of the background, the Union argues that "vacated or new County positions must be posted according to the collective bargaining agreement." More specifically, the Union notes that Article 7, Section 1, requires "vacancies and new positions" to be posted, and that "(t)here is no dispute that the vacated bargaining unit Foreman position was not posted". It necessarily follows, according to the Union, that the contract has been violated.

Beyond this, the Union asserts that the record will not support a conclusion that Olsen's position is supervisory. Since the initial interviewing of applicants for unit positions is done by the Commissioner while the "ultimate selection . . . is made by

the majority vote of the Highway Committee", the Union concludes that Olsen lacks the hiring authority of a supervisor.

Noting that Olsen has not yet disciplined any employe, and that "the testimony indicated that only the Highway Commissioner and Highway Committee could discharge an employee", the Union concludes that Olsen lacks the disciplinary authority of a supervisor.

The Union also argues that Olsen has not received any appreciable training as a supervisor.

Viewing the record as a whole, the Union concludes that "the position held by Mr. Olsen did not perform sufficient supervisory duties to be excluded from the bargaining unit." With this as background, the Union asks that "the County be ordered to post a bargaining unit Foremen position with the successful applicant being made whole."

#### The County's Initial Brief

After a review of the factual background, the County argues that "the County certainly is not obligated to fill a vacated position." The County grounds this certainty in Article 26 and in the management rights stated in Article 2. Since there is no requirement for the County to fill vacant positions, it follows, according to the County, that "the union has failed to state a specific violation, thereby failing to state a defined grievance."

Noting that the case law standards defining supervisory status are well-defined, the County contends that "it is clear that the Crew Supervisor is appropriately classified as a supervisory and managerial employe." The County asserts that the position description establishes that Olsen performs duties falling within each of the seven criteria defining supervisory status. More specifically, the County notes that Olsen supervises eighteen employes, and possesses the authority to reprimand; the authority to assign overtime; the authority to approve time off; and the authority to recommend the hire of a specific applicant for a unit position. Beyond this, the County notes that Olsen "does not physically participate in the work that the crew performs."

Viewing Olsen's and Hemp's testimony as a whole, the County concludes that "Mr. Olsen has complete authority to supervise the activities of and the actual crew members themselves, as well as all facets of their employment." It necessarily follows, according to the County, that the position of Crew Supervisor should be excluded from the Highway Department bargaining unit.

Since, according to the County, there "is no contractual obligation on the part of the County requiring them to fill the vacated union foremen's position" it follows that the grievance must be denied.

#### The Union's Reply Brief

The Union waived the filing of a reply brief.

#### The County's Reply Brief

The County notes initially that "there is no requirement in the collective bargaining agreement that a position be filled." Turning to whether Olsen's duties warrant his exclusion from the unit as a supervisory employe, the County disputes the Union's contention that Olsen is not part of the hiring process. Rather, according to the County, Olsen "will be involved in any hiring process . . . (t)here simply had not been a new hiring for Mr. Olsen to have participated in at the time of the hearing." That the Highway Committee reserves the final hiring decision to itself demonstrates, the County urges, no more than the political reality of County administration. The County also notes that the fact that Olsen has not yet suspended or terminated an employe shows nothing about the extent of his disciplinary authority other than he has not yet exercised it. That he is authorized to suspend and discharge is, the County concludes, established by the evidence.

#### DISCUSSION

The issues are stipulated. The first two issues are contractual in nature. The third issue can be resolved either as a matter of contract or of law. The parties have stipulated that the third issue should be treated as an issue of law, and the Union has withdrawn a unit clarification petition on the understanding that the Commission's case law would be applied in resolving it.

The first issue poses, then, contractual issues only. The Union's concern with the County's actions focuses on Article 7, Section 1. That provision does imply a mandatory action by stating "the Employer will post . . . vacancies". The provision does not, however, clearly eliminate any discretion on the County's part, for the posting is mandated "(w)hen it becomes necessary to fill vacancies". The section does not offer any guidance on "when" the mandated action "becomes necessary" or on who makes that decision.

The action taken by the County did create a vacancy. Once Olstad had stepped down, a position in the Foreman classification was vacant. As noted above, however, Article 7, Section 1,

mandates the vacancy be posted, but does so only if it "becomes necessary" to fill the vacancy.

The County contends that Article 2 reserves to it the discretion to determine if it was necessary to fill the vacancy in the Foreman classification. The stipulated issue subsumes the tension between the two provisions, and highlights that two personnel based actions are at issue -- the failure to fill the Foreman position and the creation of the Crew Supervisor position.

Before addressing the relationship of Articles 2 and 7, certain prefatory points must be noted. First, there is no dispute that Olstad's resignation from the Foreman position was voluntary. Beyond this, the personnel actions involved do not constitute a lay-off. The Foreman classification has not been eliminated from the agreement as a unit position should it be filled in the future. Nor has a lay-off of any existing unit personnel been effected. Olstad received a position he was willing to assume, and Olsen was, in effect, promoted. Thus, the present record poses no issue regarding the County's authority to lay-off unit members. The refusal to fill the Foreman vacancy coupled with the creation of the position of Crew Supervisor was a reorganization which created one allegedly non-unit position, and resulted in the reduction of the size of the bargaining unit.

The issue posed, then, is whether the County has, under Article 2, the authority to effect this reorganization. Article 2 does grant this level of authority to the County. Sections E, F and H of Article 2 grant the County the authority to determine, to introduce, and to change, its methods of operation and the "personnel by which such operations are to (be) conducted." Article 1, Section 1 of the agreement excludes "supervisory . . . employees" from the unit. Read together, the provisions grant the County the authority to effect the reorganization at issue here.

Article 2 requires, however, that County exercise its rights "consistently with the provisions of this Contract." The Union contends that the reorganization interferes with the operation of Article 7, Section 1. This contention cannot be adopted without reading the County's authority under Article 2 out of existence. To accept the Union's contention requires concluding that the County must use a Foreman rather than a Crew Supervisor to oversee work in the field. This requires reading the silence of Article 7, regarding who determines whether and when a vacancy exists, as an unequivocal limitation on the County's discretion. As noted above, this unpersuasively reads Sections E, F and H of Article 2 out of existence. Contrary to this, adoption of the County's interpretation of Article 2 does not read Article 7, Section 1 out of existence. Rather, that interpretation reserves to the County certain discretion to determine when a vacancy in a classification

exists. This recognizes the authority granted the County under Article 2, while preserving the Union's right to demand a posting if and when the vacancy in the Foreman position is filled.

Article 2 requires that the "County . . . not use these management rights to interfere with the rights established under this agreement." In this case, Olstad's resignation from the Foreman position was voluntary, and there is no evidence that the County created the Crew Supervisor position to punish the Union or to deny work to unit members. Rather, the record indicates Hemp took the opportunity afforded him by Olstad's resignation to reorganize the management structure of the department. Thus, the evidence will not support a conclusion that the County acted to interfere with the Union's rights under Article 7, Section 1.

In sum, the County was authorized under Article 2 to create the position of Crew Supervisor, which under the terms of Article 1, Section 1, is excluded from the unit if it is supervisory. Article 2 is broad enough to permit the County to create this position while not filling the Foreman position vacated by Olstad.

Article 7, Section 1, mandates the posting of the Foreman position if and when it is filled, but does not eliminate the County's discretion to determine if and when the position should be filled. On the present record, the County did not assert its rights under Article 2 to undermine the provisions of Article 7, Section 1. It follows that the County did not violate the agreement by not filling the Foreman position and by creating the position of Crew Supervisor.

Because there has been no violation of the parties' agreement, the second stipulated issue is not posed for decision.

As noted above, the third issue has both contractual and legal roots. Article 1, Section 1, excludes "supervisory . . . employees" from the bargaining unit. The Municipal Employment Relations Act excludes "supervisor" from the definition of "Municipal employe" stated at Sec. 111.70(1)(i), Stats. Sec. 111.70(2), Stats., grants to "Municipal employes" the "right to form, join or assist labor organizations". Supervisors, are, then, statutorily excluded from bargaining units of municipal employes. The parties have stipulated that the third issue should be resolved using statutory standards.

Sec. 111.70(1)(o)1, Stats., defines "supervisor" thus:

. . . 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 employes, 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.

The Commission considers the following factors in determining whether a position is supervisory. Not all of the criteria need be present for a position to be found supervisory. Rather, in each case the inquiry is whether the supervisory criteria described below are present in sufficient combination and degree to warrant the conclusion that the position is supervisory:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skill or for his/her supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his/her time supervising employes;
7. The amount of independent judgment exercised in the supervision of employes. 1/

Testimony indicates Olsen has yet to play any effective role in the hire of any employe, and that any role he may play in the future will be limited. The hiring process is focused on the Highway Committee and Hemp. Olsen's role, if any, will be based

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1/ Dane County, Dec. No. 14844-C (WERC, 4/89) at 9.

on his familiarity with the ability of internal applicants. This role is rooted more in his familiarity with the workers and in his own expertise than in any independent authority. His role in the discipline process is more substantial. It is apparent that Hemp is the effective authority for a discharge decision. He would, however, look to Olsen for a recommendation. More significantly here, Olsen and Hemp share the view that Olsen can issue, without need of any consultation, discipline up to and including suspension. It must be noted that Olsen has yet to wield his authority, but this is more a reflection of his time in the job and the quality of the work of his crew than of his authority as a supervisor. That Olsen is expected to evaluate his crew members underscores this point. His authority in the area of evaluation and discipline is that of a supervisor.

Olsen's authority to direct and assign the work force is also that of a supervisor, not that of a lead worker. He assigns his crew members on a daily basis, and plans their work in advance of those daily assignments. He does so without prior consultation with Gabriel or Hemp. He has the authority to call employes in outside of their regular schedule. It can be noted that he calls employes in on an emergency basis under the guidance of an established policy. It must also be noted, however, that he played an effective role in creating the policy. He approves overtime and leave without necessarily consulting Hemp or Gabriel. Similarly, he approves vacation requests and resolves scheduling conflicts under Article 9 as Hemp's "designee". In this area too, he exercises his authority without necessarily consulting Hemp.

Hemp noted that one of the primary reasons for establishing the position of Crew Supervisor was that prior to the reorganization existing supervision was stretched too thin. That Olsen oversees the work of roughly eighteen employes underscores this point. 2/ If Olsen's position is not supervisory, Hemp and Gabriel must supervise the work of thirty seven employes, and it is undisputed Hemp is spending more time in paperwork-based duties than did his predecessor. Hemp and Gabriel may oversee the work of the employes supervised by Olsen, but this oversight is not typical. Gabriel's work centers on State Highways, and Olsen's on County roadways. The work forces maintaining those roles do interchange, but are not interchangeable. Gabriel and Olsen typically oversee the work of a discrete work force. Hemp, Gabriel and Olsen share call-in duties. This underscores that each of them acts, and is expected to act, independently. Here,

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2/ The number of employes supervised by Olsen is high in light of Commission case law, see, for example, Milwaukee County, Dec. No. 14169-A (WERC, 10/77), and Sauk County, Dec. No. 6762 (WERC, 6/64).

too, Olsen's authority is more that of a supervisor than that of a lead worker.

At the time the Crew Supervisor position was posted, in 1992, the hourly rate range for the position ran, assuming a work year of 2,080 hours, from \$12.02 to \$13.94. The top rate of Range 5, Foreman, between July 1, 1992, and January 1, 1993, was \$11.19. The top rate, during the same period, for the Patrolman position from which Olsen came was \$10.17. These rates changed on January 1, 1993, to \$11.40 and \$10.38, respectively. The same rates changed, on July 1, 1993, to \$11.61 and \$10.59, respectively. It appears from this that the position of Crew Supervisor does carry a supervisory premium. The impact of overtime on the unit positions is not clear on this record, but the differential between the positions does seem to reward the Crew Supervisor for the exercise of supervisory authority. It should be noted that Olsen spends roughly 25% of his time assigning and directly overseeing the work of his crew. However, since the Crew Supervisor does not do any unit work, the wage premium he receives can not persuasively be ascribed to the exercise of non-supervisory skills. 3/

It is undisputed that the position of Foreman required Olstad to supervise an activity, not employees. He served as a lead worker at a single job site. Olsen is expected to oversee multiple job sites. 4/ He maintains the time records of the employees he is responsible for overseeing, without regard to where they work. As noted above, he approves leave time, and authorizes overtime. He does not perform unit work. 5/ It can not be said,

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3/ Cf. Town of Conover, Dec. No. 24371-A (WERC, 7/87), where the Commission ascribed a pay differential to non-supervisory duties which did not warrant exclusion from the unit. This is a consideration here, but is insufficient to overcome the indicia of supervisory authority manifested here.

4/ The supervision of multiple work sites has been a significant indicia of supervisory authority for the Commission, see, for example, Milwaukee County, Dec. No. 14169-A (WERC, 10/77), and Lanlade County, Dec. No. 6716 (WERC, 4/64).

5/ The performance of unit work has been a significant indicia of the absence of supervisory authority by the Commission, see, for example, Town of Madison, Dec. No. 13979 (WERC, 9/75), and Rock County, Dec. No. 6144-B (WERC, 5/68). The non-performance of unit work has, similarly, been a significant indicia of the presence of supervisory authority, see, for example, Milwaukee County, Dec. No. 14169-A (WERC, 10/77), and Sauk County, Dec. No. 6762 (WERC, 6/64).

against this background, that Olsen supervises only an activity.  
6/

As noted above, Olsen does not perform unit work. Olstad, when a Foreman, worked alongside his crew. This indicates supervisory authority on Olsen's part.

As noted above, Hemp and Gabriel may oversee the work of employes supervised by Olsen. This is not, however, typical, and Olsen does exercise independent judgement in supervising the employes he is responsible for. This extends from calling in employes for overtime to counseling employes without prior consultation.

On balance, the position of Crew Supervisor manifests the supervisory criteria established by the Commission's case law in sufficient combination and degree to warrant the conclusion that the position is supervisory.

#### AWARD

The County did not violate the collective bargaining agreement by not filling a vacated bargaining unit Foreman position but by creating a non-bargaining unit supervisory position.

The non-bargaining unit position is supervisory.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 15th day of March, 1993.

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6/ For a comparison of a position supervising an activity against that of a position supervising employes, See the analysis of the positions of Highway Crew Leaders and the Lead Highway Mechanic in Dane County (Highway Department), Dec. No. 14844-C (WERC, 4/89). In Dane County, the Crew Leaders lacked the indicia of supervisory authority possessed by the Lead Highway Mechanic in that case and by the Crew Supervisor in this case.

By Richard B. McLaughlin /s/  
Richard B. McLaughlin, Arbitrator