

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 POLK COUNTY : Case III
 : No. 10641 ME-229
 Involving Certain Employees of : Decision No. 7451-B
 :
 POLK COUNTY HOME FOR THE AGED :
 :

Appearances:

Mr. John E. Schneider, Polk County District Attorney, Polk County Courthouse, Balsam Lake, Wisconsin 54810, appearing on behalf of the County.
Mr. Richard H. Rettke, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 68, Rice Lake, Wisconsin 54868, appearing on behalf of the Union.

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

Polk County having, on October 21, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of its employes at the Home for the Aged, presently represented by Polk County Public Employees Union Local 774, affiliated with Wisconsin Council 40, AFSCME, AFL-CIO, by determining whether the positions of Head Housekeeper, Maintenance Engineer and Head Laundress should be excluded from the unit on the basis that these positions are supervisory, and by determining whether the position of Social Services Assistant should be excluded from the unit on the basis that the position is filled by a professional employe; and the Commission having, on November 2, 1982, appointed Lionel L. Crowley, a member of its staff, to act as Examiner to conduct a hearing and issue a final decision as provided in Section 227.09(3)(a) Wis. Stats.; and a hearing on said petition having been held in Balsam Lake, Wisconsin on December 15, 1982; and the parties having completed the filing of briefs by February 10, 1983; and the undersigned, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Polk County, hereinafter referred to as the County, is a municipal employer, and among its functions, maintains and operates a home for the aged in Amery, Wisconsin; and that the County maintains its principal offices in Balsam Lake, Wisconsin 54810.
2. That Polk County Public Employees Union Local No. 774, WCCME #40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization representing employes for the purpose of collective bargaining; and that it maintains its offices at P. O. Box 68, Rice Lake, Wisconsin 54868.
3. That following an election conducted by it on March 2, 1966, the Wisconsin Employment Relations Commission, herein the Commission, on March 14, 1966, certified the Union as the exclusive collective bargaining representative of certain of the County's employes in a bargaining unit described as "all regular full-time and all regular part-time employes employed by Polk County in the Golden Age Manor, including maintenance employes, licensed practical nurses, attendants, kitchen employes, housekeeping employes, cooks, office clerical, hairdresser and activity aide, but excluding Superintendent, registered nurses and casual employes." 1/

1/ Polk County (7451) 3/14/66.

4. That the instant proceeding was initiated on October 21, 1982 by a petition filed by the County, wherein it contends, contrary to the Union, that the positions of Head Housekeeper, Maintenance Engineer, and Head Laundress, currently occupied by Viola Albertson, Gerald Case, and Jennie Kittel, respectively, are supervisory in nature and therefore should be excluded from the unit; and that the position of Social Services Assistant, currently occupied by Eldora Pratt, is professional in nature and should be excluded from the unit.

5. That Head Housekeeper Albertson is responsible for directing the work of six other employes; that while she spends a substantial amount of time performing the same duties as the other housekeeping employes, she has hired or effectively recommended the hiring of housekeeping employes; that she has discharged or effectively recommended the discharge of housekeeping employes; that she schedules employes' work hours, assigns additional work, and evaluates employes' work performance including yearly written evaluations; that she orders supplies and makes purchases for the housekeeping department; that she participates in the adjustment of grievances; that she is paid \$.25/hour more than other housekeeping employes; that she attends monthly department head meetings and reports directly to the Administrator of the Home for the Aged; and that Albertson exercises supervisory responsibilities in sufficient combination and degree so as to make her a supervisory employe.

6. That Maintenance Engineer Case is responsible for directing the work of two other employes; that while he performs the same duties as the other maintenance employes, he has hired or effectively recommended the hiring of maintenance employes and he has discharged or effectively recommended the termination of a maintenance employe; that he schedules the hours of work for employes, assigns additional duties, and evaluates employes including yearly written evaluations; that he participates in the adjustment of grievances; that he purchases supplies and equipment for the maintenance department; that he is paid \$.50/hr. more than other maintenance employes; that he attends monthly department head meetings and reports directly to the Administrator of the Home for the Aged; and that Case exercises supervisory responsibilities in sufficient combination and degree as to make him a supervisory employe.

7. That the Head Laundress is responsible for directing the work of two other full-time employes and one limited part-time employe; that the Laundry operates on two shifts as follows: 4:30 a.m. to 12:30 p.m. and 6:00 a.m. to 2:00 p.m.; that the Head Laundress position has been filled by Jeannie Kittel for some three and half years and she spends a substantial amount of her time in performing the same duties as employes in the laundry; that the Head Laundress evaluates the employes in the laundry on a yearly basis; that while Kittel has been told by the Administrator that she has the authority to hire and to discharge employes, she has not hired nor terminated any employe and has not promoted, transferred, laid off or rehired employes; that Kittel receives \$.25 an hour more than the other Laundry employes; that Kittel reports directly to the Administrator and attends monthly staff meetings attended only by other Department Heads; and that Kittel does not exercise supervisory responsibilities in sufficient combination and degree as to make her a supervisory employe.

8. That the Social Services Assistant is a single Department position and is responsible for developing social services plans for the care of each resident of the Home for the Aged; that the Social Services Assistant takes the social history of each resident at the time of admission, works with the resident's family, familiarizes residents with the facility and services available, establishes a plan of care for the resident, assists residents to adjust to the facility, informs residents of their rights under State Law, provides follow up on residents, contacts Northern Pines to provide for counseling, and acts as discharge coordinator; that Eldora Pratt has held this position for a little over six years; that Pratt possess a Bachelor's degree in psychology; that due to changing State regulations, Pratt's responsibilities have increased in the period that she has held this position; that Pratt does not participate to a significant degree in the formulation, determination or implementation of management policy nor does she perform duties in sufficient degree or combination to be a supervisor; and that the job responsibilities of Pratt are predominately intellectual and varied in nature, involve the consistent exercise of judgment, cannot be placed on a standardized basis, and require knowledge of an advanced type customarily acquired through formal higher education.

Upon the basis of the foregoing Findings of Fact, the undersigned makes and issues the following

CONCLUSIONS OF LAW

1. That the occupants of the positions of Head Housekeeper and Maintenance Engineer are supervisory within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act (MERA), and that therefore, said positions are not occupied by municipal employes within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That the incumbent in the position of Head Laundress is not a supervisor within the meaning of Section 111.70(1)(o)1 of MERA, and that therefore, said individual is a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

3. That the occupant of the Social Services Assistant position is a professional employe within the meaning of Section 111.70(1)1 of MERA.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the undersigned makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 2/

1. That the positions of Head Housekeeper and Maintenance Engineer be, and the same hereby are, excluded from the bargaining unit described in Finding of Fact No. 3

2. That the position of Head Laundress be, and hereby is, included in the bargaining unit described in Finding of Fact No. 3.

3. That the position of Social Services Assistant be, and the same hereby is, excluded from the bargaining unit described in Finding of Fact No. 3.

Dated at Madison, Wisconsin this 2nd day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

1/ Pursuant to Sec. 227.11(2), Stats., the Examiner hereby notifies the parties that a petition for rehearing may be filed with the Examiner by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of

(Footnote 2 Continued on Page 4)

(Footnote 2 Continued)

the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

In its petition, the County contends that the Head Housekeeper, Maintenance Engineer and Head Laundress should be excluded from the bargaining unit as supervisory employees. The Union contends that these positions are "working foremen" who spend most of their time performing bargaining unit work and little, if any, time is spent on supervisory tasks.

Section 111.70(1)(o)1 of MERA defines the term "supervisor" as follows:

. . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

In its interpretation of the above definition, the Commission has on numerous occasions, listed the following factors as those to be considered in the determination of an individual's supervisory status:

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 skill or for his 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 time supervising employes;
7. The amount of independent judgment exercised in the supervision of employes. 3/

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employe to be a supervisor. 4/ Even though an employe may spend a majority of his/her time doing non-supervisory duties, the Commission has determined that he/she is supervisory where sufficient responsibilities and authority of a supervisor are present. 5/

3/ City of Milwaukee (6960) 12/64; Augusta School District (17944) 7/80; Cornell School District (17982) 8/80; Eau Claire County (17488-A) 3/81.

4/ Lodi Jt. School District (16667) 11/78; City of Lake Geneva (18507) 3/81; Eau Claire County (17488-A) 3/81.

5/ City of Madison (Public Library) (19906) 9/82; School District of Montello (17829-B) 2/82.

It is clear from the record that while Albertson, the Head Housekeeper, spends the major part of her work day performing duties similar to those of other housekeepers, she has interviewed applicants for employment and has hired five of the six employes under her direction in the Housekeeping Department. The only employe she has not hired was employed prior to Albertson's becoming the Head Housekeeper. The record reveals that Albertson has disciplined employes and has participated in the adjustment of grievances. Additionally, she schedules work, orders supplies, authorizes overtime, evaluates employes, and is generally in charge of the Housekeeping Department. Based on these factors, it is concluded that Albertson is a supervisory employe and therefore is excluded from the bargaining unit.

Similarly, the record indicates that while Case, the Maintenance Engineer, spends the bulk of his time performing maintenance duties, he has interviewed applicants for employment, has hired employes, has terminated an employe, schedules the work of employes in the Maintenance Department, evaluates employes, disciplines employes and participates in the adjustment of grievances. Based on these factors, it is concluded that Case is a supervisory employe, and therefore is excluded from the bargaining unit.

Turning to the Head Laundress position, the record reveals that Kittel spends a majority of her time performing laundry duties. Kittel determines the work schedule in the laundry and evaluates employes yearly. The record does not establish that these evaluations have been used in anyway. The record further indicates that while Kittel has the authority to hire and fire employes, the evidence establishes that she has not hired or fired anyone. Only one vacancy has occurred in the laundry and that was filled through job posting. The record fails to demonstrate that Kittel had any input concerning the employment of employes in the laundry. There was no evidence that Kittel was involved in the grievance procedure. It must be noted that Kittel was unavailable to testify at the hearing to clarify her duties and responsibilities. The Office Manager testified that Kittel has disciplined employes; however, no evidence of any specific incident of discipline was introduced. The undersigned is of the opinion that the record evidence fails to demonstrate that there are a sufficient number of necessary factors present to conclude that Kittel is a supervisory employe, and therefore her position is included in the unit.

In its petition, the County also contends that the Social Worker Assistant is a professional employe. The Union contends that the position is non-professional whose duties do not require independent judgment and are not predominately intellectual or varied in character. It asserts that the duties are routine in nature and are similar to Social Services Aide I, a non-professional position, with the only difference being that one does activities in a community setting and the other performs duties in an institutional setting.

Pursuant to Section 111.70(1)(1) of MERA, the following criteria must be considered in determining whether municipal employes occupy professional positions:

1. Any employe 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 mental, manual or physical, or

2. Any employe who:

- a. Has completed the courses of socialized intellectual instruction and study described in subd. 1. d;
- b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1.

A review of the record indicates that Pratt, the Social Services Assistant, essentially performs the duties of a social worker. Pratt has a degree in psychology rather than social work and under the applicable state and federal regulations, she must confer with a consultant who has a social work degree. Pratt indicated that she meets monthly with this outside consultant who reviews what she has done. The evidence indicates that there is no close supervision by the consultant. Pratt not only gathers information but must analyze it to evaluate a resident's needs and to determine the social program required. She then implements the program and follows through on it making appropriate adjustments. Contrary to the Union's assertion, Pratt is not merely a recorder of information, but she must exercise judgment and discretion in the performance of her job. The Examiner is satisfied that, based on the record, Pratt satisfies the criteria of a professional employe. She, therefore, is excluded from the bargaining unit.

Dated at Madison, Wisconsin this 2nd day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner