LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS

RESEARCH REPORT

on

SUPERVISORY EMPLOYEES BARGAINING RIGHTS

INDUSTRIAL RELATIONS ASSOCIATES, INC.
2909 Wayzata Boulevard
Minneapolis, Minnesota 55405

December, 1981

TABLE OF CONTENTS

MEMORANDUM

TO: Legislative Commission on Employee Relations

FROM: Industrial Relations Associates, Inc.

SUBJECT: Research Report - Supervisory Employee Rights

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

While the early years of labor-management statutory bargaining rights for supervisors in the private sector were unclear as to the rights of supervisors to bargain Congress specifically excluded supervisors from the definition of an employee in the 1947 amendments to the National Labor Relations Act (Taft-Hartley Act). The granting of bargaining rights in the public sector is based on the belief that public sector supervisors are different from their counterparts in private employment.

It is argued that public sector supervisors do not relate to the management functions, are not given the authority to make decisions and that they are frequently leaders in public employee unions. It is also suggested that public and private sector supervisors perform different tasks. However, it is noted that no supervisor in the federal government is allowed to bargain collectively.

Many authorities take the position, and there is strong evidence to support it, that if management is to be effective they need all members of the management group to identify with and remain loyal to management. All members and management includes all management down to and including first level supervisors.

Experience has clearly demonstrated that by not including supervisor as part of the management team severely hinders effective labor relations. To

have supervisors loyalty and management attitude and to avoid conflict of interest such job classifications must be excluded from collective bargaining.

In addition to excluding supervisors from the definition of an employee the Director of Bureau of Mediation Services and PERLA needs to follow a broad definition of what constitutes supervisory duties and responsibilities and apply a restrictive approach to "working" or "lead" job classifications. It is recommended that the statute be revised to define a supervisor as any individual who possesses any of the functions enumerated in the definition of "supervisor" in a manner requiring independent judgment. This definition should be applicable even if a supervisor's judgment is subject to review by higher management. This definition and interpretation would be identical to the policy position of the Federal Labor Relations Council for federal government employees, the federal courts under the National Labor Relations Act as well as the states of Iowa and Indiana. It is further recommended that the determination of supervisory status be determined by job content rather than job title.

Permitting public sector supervisors to form bargaining units seriously erodes the efficiency of the government. There is an overriding need for efficient public administration requiring that management personnel be strongly committed to the management's point of view. Dividing up the management structure by permitting supervisors to bargain collectively causes split loyalties and limits managerial effectiveness.

The most significant aspect of successful labor relations lies in the day-to-day contract administration. The key person in this process is the first line supervisor. While contract negotiations causes the headlines day-to-day administration of union contracts is the mechanism that makes the system work and work effectively and efficiently.

RECOMMENDATIONS

"As previously discussed in our report on bargaining unit determinations (page iv), we recommend:

1. That the State and its departments or agencies not be required to bargain collectively for supervisory and confidential employees.

2. That supervisory and confidential employees be accorded an opportunity to "meet and confer" with the appropriate department or agency heads through their designated representative. However, the designated representative may not represent such groups if such organization or association admits to membership, or is affiliated directly or indirectly with an organization which admits to membership employees covered under the state collective bargaining law.

3. It is further recommended that employees in a lead or working supervisory role; e.g., a chief clerk without supervisory authority would be included in the "clerical and related jobs" bargaining unit and not be classified as a supervisory employee because of his/her job title."

INTRODUCTION AND OVERVIEW

Section 1

One of the most difficult questions faced by public policy-makers today is whether or not bargaining rights should be extended or continued to public sector supervisors. Supervisors in some public sector jurisdictions have been granted some form of statutory bargaining rights protection largely on the premise that they are somehow different from their private sector counterparts, who enjoy no protection under the National Labor Relations Act (NLRA).

One of the major differences between public and private sector supervisors is the limited decision making authority of many of the former. One reason for this lack of decision making authority is the highly centralized authority structure found in most government organizations. The tendency in public employment to push the title of supervisor to very low levels in the organizational structure is another reason for the limited decision making authority possessed by many first-level supervisors. In addition, many of the characteristics that distinguish supervisors from subordinates in the private sector, such as salary and benefit differentials, task differentials, and shift work, are absent in the public sector work environment.

Many public sector supervisors often have a more paternalistic attitude toward their subordinates than do private sector supervisors (Hayford and Sinicropi, 8 p.1). This paternalistic attitude is attributed to the fact that most public sector supervisors have risen through the organizational ranks. Hayford and Sinicropi also note that the paternalistic attitude becomes even more important when one considers the fact that prior to the advent of collective bargaining, upper level management seldom acted to draw a clear line between supervisors and rank and file employees (8 p.2). The result has been a great deal of role ambivalence among public sector supervisors and the

observation that loyalties and attitudes held by these supervisors often lie midway between those of rank-and-file and higher level management.

The arguments cited support the view that a stronger community of interest exists between public sector supervisors and their subordinates than is found between private sector supervisors and their subordinates. This contention is supported by the fact that public sector supervisors sometimes hold leadership positions in public employee unions and professional associations (for example the International Association of Fire Fighters). Advocates of supervisory bargaining rights also point to the fact that a number of comprehensive state employees statutes make no distinction between supervisors and rank and file employees.

Those who oppose granting bargaining rights to public sector supervisors argue that in order for governments to create and maintain sophisticated labor relations functions the public sector employer must have the loyalty of all members of management, including the first line supervisor. This is especially true since the first line supervisor is responsible in large part for the day to day administration of the collective bargaining agreement. Rains (14 p.284) states:

> "Effective public administration is as dependent on sound administrative practice, chains of command, levels of trained and management-oriented supervisors as the private sector employers. If anything, the need for such aid is greater and sharper in the public sector where public interest, public services, objectives and tax dollars are at stake."

Many of the arguments both for and against supervisory bargaining rights have centered on the definition of what constitutes a supervisor. This report will now examine this question.

DEFINITION OF SUPERVISOR

Section 2

Wheeler (20 p.722) notes that there have been a number of scholarly attempts to define the term "supervisor." Mintzberg, a management theorist, defines a manager or supervisor as a unprogrammed decision-maker to program the work of others and emphasizes the variety and lack of repetition in managerial or supervisory work (10 p.16). An essential attribute of supervisory behavior as seen by Terry (18 p.6) is that a supervisor achieves his results by motivating others to perform work rather than by performing operative work himself. Another element of supervisory status is that of being responsible for the results of the work of others. If the work is not performed properly the supervisor must answer for the results (Terry 18 p.5). In this view supervisors are seen as supervising performance, having nonphysical contact with work, having remote control over work and being accountable for work achieved by operative employees while operative employees themselves are seen as performing work, having physical contact with work, having direct and close control over work and being accountable only for their own work.

Some authors have approached the problem of defining the essential nature of the supervisory function by describing the various roles the manager or supervisor occupies. Halsey (5,p.20) defined the role of supervisor in the following manner:

> "Supervision, then, is selecting the right person for each job; arousing in each person a interest in his work and teaching him how to do it; measuring and rating performance to be sure teaching has been fully effective; administering correction where this is found necessary and transfering to more suitable work or dismissing those for whom this proves ineffective; commending whatever praise is merited and rewarding for good work; and, finally, fitting each person harmoniously into the working group - all done fairly, patiently, and tactfully so that each person is caused to do his work skillfully, accurately, intelligently, enthusiasticly, and completely."

Other scholars have focused more specifically on the definition of a first line supervisor. Satrain and Baker (15 p.337) describe a first line supervisor as follows:

"The term supervisor designates the fundamental duties of the job at the very bottom or first level of the management hierarchy, the job that bears the formally assigned authority and resposibility for planning and controlling the activities of subordinate non-supervisory employees usually on a direct, face-to-face basis."

Supervision is also said to exist where there is immediate contact with people in the direction of work (Sherwood and Best 16 p.6). One study found that the principle functions of assembly line foremen were staffing, insuring quality, and meeting emergencies (Walker, Guest & Turner 20 p.217). Given these definitions of "supervisor" as a background, the definition of supervisor contained in private sector labor relation statutes will now be examined.

PRIVATE SECTOR LEGAL DEFINITIONS OF A SUPERVISOR

Section 3

The National Labor Relations Act ("Act") as originally enacted in 1935 did not specifically define supervisory employees. It was contemplated that the definition of "employer" - including "any person acting as an agent of an employer directly or indirectly" (Wagner Act, Section 2 (2)) - would include all employees acting in positions at or above the supervisory level. The National Labor Relations Board ("Board" or "NLRB"), however, adopted a position to the contrary. In the Union Colleries Co. case (1942) the NLRB ruled that since supervisors were not specifically excluded from coverage by Congress and since their status as "employees" was self-evident (Section 2(3) of the Act defined employee as "any employee"), supervisors should be granted the protection of the Act to organize and bargain collectively.

This decision was reversed in 1943 in the Maryland Dry Dock Co. case when the Board decided that Congress had not really intended that supervisors should be included in a unit with rank-and-file employees. Supervisors were denied any statutory protection under the Wagner Act by this decision, but they were

not prohibited from forming unions. In announcing their decision the NLRB warned that to permit certain employees to unionize would blur the distinction between management and labor. Furthermore, the Board expressed the fear that once supervisors were organized, even in a separate unit, they would ally themselves with the rank-and-file, thus depriving the employer of completely loyal and trustworthy representatives (Barney 3 p.364). This decision lent support to the employer contention that organized supervisors could not, or would not, give management their undivided loyalty. As noted in Section 1 above, this contention remains as one of the major reasons for opposition in granting full bargaining rights to supervisors.

Two years following the Maryland Dry Dock case, in 1945, the Board reversed itself again in the Packard Motor Car Co. case when it approved a separate bargaining unit for supervisors. This case was affirmed by the United States Supreme Court in 1947.

The protection granted supervisors under the NLRB's interpretation of the Wagner Act was short-lived, however. With the passage of the Labor Management Relations Act of 1947 (Taft-Hartley Act), supervisors were stripped of all protection of their collective bargaining rights. Not only did Taft-Hartley relieve employers from any legal duty to bargain collectively with their supervisors, it also permits them to discriminate against any supervisors engaged in union activities.

The primary reason for the adoption of the supervisory exclusion under the Act was to preserve the management team. The Senate report that accompanied the bill providing for the exclusion said in part:

> "A recent development which probability more than any other single factor has upset any real balance of power in the collective bargaining process has been the successful efforts of labor organizations to invoke the Wagner Act for covering supervisory personal, traditionally regarded as part of management, into organizations composed of or subservient to the unions of the very men they were hired to supervise."

As Taylor & Witney (17 p.288) noted, the Taft-Hartley Act had the effect desired by the statute's authors. The foreman's labor union movement was wiped out. Since the passage of the Act, the NLRB has had to deal with the problem of determining whether a particular individual was a "employee" and thus entitled to the protection of the law or a "supervisor" and thus excluded from that protection. In section 2 (11), Congress provided the following definition:

> "The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, 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 Board has consistently ruled that any employee who was extensively engaged in direct supervision or control of other employees is not covered by the Act and hence not entitled to collective bargaining rights. This has been done on a case-by-case basis and although no general tests have been applied, certain common characteristics of supervisory status have been identified:

> "It has been clearly stated by the courts that it is the existence rather than the exercise of authority within the meaning of Section 2 (11) that determines supervisory status; that an individual need possess only one or more of the types of authority specifically set out in Section 2 (11), not all of them; and that the presence in the employee of the general power of the responsiblity to direct other employees is sufficient to render an individual a supervisor, even though he possess none of the specific powers enumerated in Section 2 (11) of the Act" (1 Wahn, 19 p.345).

Furthermore, the majority of the Board decisions dealing with the supervisory status of an individual employee have focused on the degree of judgment exercised by that individual. In Mid-State Fruit, for example, the Board ruled that the employee in question was not free to use his own independent judgment and therefore did not responsibly direct the work of other employees. Nor did he possess any of the other statutory indicia of a supervisor. The Board thus found that he was not a supervisor within the meaning of Section 2 (11) of the Act.

A time standard was applied in the Westinghouse Electric Corp. case where the Board ruled that any engineer who, during the preceding year, spent 50% or more his working time performing nonsupervisory duties could be afforded the protection of the Act.

The Board has also ruled that a person who has full-time supervisory authority does not lose supervisory status because his authority is exercised only infrequently. A rank-and-file employee, on the other hand, does not become a supervisor because of sporadic and infrequent assumption of supervisory duties. Conversely, it has been ruled that workers who regularly perform as part-time supervisors and exercise supervisory functions for substantial portions of their working time are supervisors.

The Board has also found that the prospect of being promoted to a supervisory position does not satisfy any of the statutory indicia of supervisory status and that news and sports editors were not supervisors since their relationship to reporters was cooperative and informal rather than supervisory in nature. In another case dispatchers were ruled not to be supervisors since their duties principally involved the direction and control of equipment as opposed to direction and control of employees, which was only a incidental aspect of their duties. The 4th Circurt denied enforcement of the above Board decision, however, ruling that the Board disregarded the fact that "there is a substantial possibility that the fraternal feeling engendered by union membership would threaten the ability of the dispatchers to act in the best interest of their employer."

Board rulings of supervisory status were the subject of two recent Circuit Court decisions. The Ninth Circuit upheld the Board's decision that assistant engineers aboard a deep-sea mining exploration vessel were not supervisors but were merely part of a formal "pecking order" on the ship. On the other hand, the Sixth Circuit rejected the Board ruling that that a utility company's

supervisory personnel were not supervisors within the meaning of the Act. In concluding that the supervisory personnel were statutory supervisors, the court ruled that they coordinated the company's electrical system operations on a day-to-day basis, as well as during emergencies and shutdowns. In addition, the supervisory personnel issued instructions directly to field personnel, often departing from normal operating procedures when they independently determined that circumstances warranted such departures.

Supervision of only one employee is a sufficient basis for exclusion from the bargaining unit provided that the statutory indicia of supervisory status are present. The Board found a worker who had only a single employee under his immediate control and direction to be a supervisor because the evidence established that he had the responsibility for assigning work to, disciplining, and effectively recommending wage increases for that employee. In a case involving a supermarket meat department manager who did not have authority over personnel related matters and who spent a substantial amount of time performing meat cutting work was excluded from the bargaining unit on the grounds that to do so would have left no one in that department in a supervisory capacity.

In one of the first cases raising the issue of the status of attorneys as supervisors, the Board held that the unit heads of the legal-aid program were not supervisors. The Board concluded that they did not possess traditional supervisory authority and powers and that their involvement in training, case assignment, and the direction of other staff members' work was incidental to "their professional responsibilities as officers of the Court".

While the exercise of one or more of the statutorally described functions in Section 2 (11) is always the focal point for assessing the status of an individual as a supervisor or nonsupervisor, the Board continues in borderline cases to consider the other so-called "secondary indicia" in determining whether a particular individual is or is not a "supervisor" within the meaning

of the Act. Among the secondary issues or criteria considered by the Board are whether the individual:

(1) Is considered by his fellow workers and by himself to be a supervisor.

(2) Attends management meetings.

(3) Receives a higher wage rate then his fellow workers.

(4) Punches a time clock or wears a uniform.

(5) Has substantionally different benefits then his fellow employees.

(6) The ratio of supervisors to supervised employees is another frequently considered "secondary" factor in determining supervisory status.

After studying the issue, Wheeler (21 p.724) has concluded that the definition of a supervisor contained in the NLRA is reasonably consistent with the definitions provided by scholars. He also notes that it is a most important definition for practical purposes, since it has been applied in the private sector for approximately 30 years and notes that public sector bargaining laws have copied this definition to a large extent.

FEDERAL GOVERNMENT DEFINITION

Section 4

The Federal government experience in dealing with supervisors has paralleled the private sector experience in many ways. Like the Wagner Act, the first Executive Order dealing with the bargaining rights of federal government employees did not exclude supervisors from its coverage. The only reference to supervisors in EO 10988 was contained in Section 6 (a)(3). This section required that supervisors who evaluated the performance of other employees not be placed in the same unit with such employees. Hayford & Sinicropi (8 p.7) note that the absence of a specific grant for prohibition of supervisory rights is analogous to statutory rights afforded supervisors under the Wagner Act.

The Executive Order 11491 modifications to Executive Order 10988, like the Taft-Hartley amendments to the Wagner Act, changed considerably the status of supervisory bargaining rights for federal employees and brought them in line with the status of private sector supervisors. In addition, parallels can be drawn between the policies and decisions of the Federal Labor Relations Council (FLRC) regarding supervisory status and the policies and decisions of the NLRB on the matter.

EO 11491, contained the following definition of supervisor in Section 2(c):

> "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or to affectively recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The assistant secretary of labor-management relations was assigned the primary responsibility for the interpretation and application of the provisions of the Order and the FLRC has the authority to review his decisions when major policy issues were presented or where in the Council's judgment it appears that a "capricious or arbitrary decision" has been made. As noted above, many of the Council's decisions are similar to those of the NLRB on supervisory status questions.

In the USDA-Peoria case, the FLRC overruled the decision by the assistant secretary in which he had interpreted the Section 2 (c) definition of supervisor as requiring the exercise of authority over at least two employees. The Council held that the assistant secretary's reliance on "plural forms" found in that Section (i.e. employees, them, their) was improper. The Council pointed to a standard rule of statutory construction - that in the absence of a clear contrary intent, the plural form indicates the singular - and emphasized that the presence of supervisory status is determined by the duties of the employee and not by the number of the subordinates.

The FLRC upheld the assistant secretary's decision in the McConnell Air Force Base case. In that case a civilian employee exercised supervisory responsibility over military personnel (who are excluded from the order's coverage). The assistant secretary and the Council ruled that the fact that an employee's subordinates are not covered under the order's definition of an employee does not alter the former's supervisory status. Citing its decision in the Peoria case, the FLRC reemphasized that "supervisory status was intended to be determined on the basis of the authority of the individual" and not such secondary factors as the characteristics of that individual's subordinates.

The FLRC further delineated its policy regarding supervisory status in two related cases. In the China Lake Naval Weapons Center case, the Council adopted a "disjunctive" view of the Section 2 (c) definition of supervisor. The Council interpreted the Order's definition of supervisor to mean that an employee is a supervisor if he possesses the authority to perform any of the functions enumerated in the Order in a manner requiring "independent judgment". In the case in question, the Council held that the presence of a higher level review of supervisor's decisions does not detract from the authority those supervisors possess. The decision's companion case, Mare Island Naval Shipyard, was that it is immaterial in the determination of supervisory status whether the employee in question carries out his function in a formal or informal manner. Thus, such "qualifiers" as sufficient authority, formal discipline, or permanent transfers were determined not to have been intended to be used in making a determination of supervisory status.

Hayford & Sinicropi (8 p.11) characterized the FLRC's interpretation of the term "supervisor" as expansive. They note that the FLRC explains its posture in the following manner:

> "Section 2 (c) must be interpreted in a manner consistent with the realities of the exercise of authority in the federal sector. If only those individuals who possess the unqualified authority to promote or to

make the final decision at the last stage of a grievance procedure were considered supervisors, only top officals would be supervisors and there would be no lower level supervisors in the federal sector. We see no basis for adopting such a strained interpretation of Section 2 (c)."

STATE AND LOCAL GOVERNMENT DEFINITIONS

Section 5

Treatment of supervisory status by the various state and local statutes is much more diverse than under either the NLRA or EO 11491. These differences are due primarily to the fact that the state and local government sector is not regulated by a single pre-emptive federal statute or executive order, but by a patchwork of state laws, Governor's Executive Orders, Attorneys General opinions, and municipal ordinances. All of these offer variations reflective of the peculiarities of each jurisdiction. Many of these jurisdictions have, however, relied to some extent on the experiences in the private and federal sectors. Definitions from several of these jurisdictions are described below.

IOWA

The definition of supervisory employee provided by the Iowa statute parallels the definition of supervisor found in the Labor Management Relations Act (LMRA or Taft-Hartly Amendments) almost word-for-word. The only exceptions are the substitution of the term "public employer" for "employer" and the replacement of the word "responsibility" in the LMRA with the words "the responsibility". The statute also specifically enumerates several positions as being supervisory; namely all school superintendents, assistant superintendents, principals, and assistant principals.

WISCONSIN

The Wisconsin Act utilizes the standard definition of supervisor derived from the LMRA, with the addition of the prefactory phase ". . . any individual whose work is different from that of his subordinates. . . .". In decisions

dealing with supervisory status, the Wisconsin Employment Relations Commission (WERC) has often made the distinction between "working foremen" or "lead workers" and supervisors. The WERC has held that in order to be deemed a supervisor, a employee must exercise sufficient supervisory authority to (essentially to hire, discharge, discipline, etc., in a manner requiring independent judgment) over people, rather than directing an activity (e.g., a nursing care plan) or perform administrative duties. Additionally, the Commission has relied heavily on the statutory requirement that a supervisor's principal work be different from that of his subordinates. Finally, the Commission has held that the frequency with which the employee performs the required supervisory functions enumerated in the Act will not be a major consideration in determining such a employee's status.

OREGON

Oregon's statute specifically excludes supervisors from its definition of employee but expands its standard definition of supervisory employee with the following phrase: ". . . the exercise of any function of authority enumerated in this subsection shall not necessarily require the conclusion that the individual so exercising that function is a supervisor within the meaning of this Act".

CONNECTICUT

Connecticut's Municipal Employee Relations Act provides that in determining supervisory status the Connecticut State Board of Labor Relations shall: "consider among other criteria, whether the principal functions of the position are characterized by not fewer than two of the following:

(A) Performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinates employees;

(B) Performing such duties as are distinct and dissimilar from those performed by the employees supervised;

(C) Exercising judgment in adjusting grievances, applying other established personnel policies and procedures and enforcing the provisions of a collective bargaining agreement;

(D) Establishing or participating in the establishment of performance for subordinate employees and taking corrective measures to implement those standards.

ALASKA

Alaska's statute defines a supervisory employee as a individual having substantial responsibility on behalf of the public employer regularly to participate in the performance of all or most of the following functions: employ, promote, transfer, suspend, discharge or adjudicate grievances of other employees. The exercise of such responsibility must require the exercise of independent judgment.

ILLINOIS

The Executive Order covering collective bargaining by Illinois state employees contains a standard definition of a supervisor. In order for an individual to be deemed a supervisor two findings must be made: his principal work must be different from that of his subordinate's and he must possess any one or more of the specific responsibilities listed in the executive order.

MINNESOTA

Minnesota's current definition of supervisor is a standard one. A "supervisory employee" means any person having authority in the interests of the employer to hire, transfer, suspend, promote, discharge, assign, reward or discipline other employees or responsibly direct them or adjust their grievances on behalf of the employer or to effectively recommend any of the aforesaid actions, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment. Section 179.71 (3) requires that in order for an

employee to be deemed a supervisor, the employee must perform or effectively recommend a majority of the functions enumerated.

The Minnesota Public Employment Labor Relations Board (PERB), which has the authority to review supervisory status determinations made by the Director of the Bureau of Mediation Services, has often used language similar to that of the Wisconson Commission. Employees who performed some functions or effectively recommended actions that could be considered supervisory have been held not to be supervisory employees for the purpose of the Act. The Director of Mediation Services and the PERB have declined to exclude from nonsupervisory bargaining units those employees whom they characterized as "work foremen" or "leadmen".

In this respect, then, the Minnesota statute, is more restrictive in its definition of supervisor than many of the statutes noted previously. For example, the interpretation of EO 11491 in the federal sector has been that the employee in question was deemed a supervisor if he performed any of the functions enumerated in the definition of supervisor. Such disjunctive interpretation would result in a greater number of employees being classified as supervisors than in the case in Minnesota where a majority of the functions listed must be performed before an employee is granted supervisory status. The Minnesota interpretation imposes far greater limitations on the ability of the State of Minnesota, as an employer, to effectively direct the workforce of its employees.

GENERAL RESEARCH

Section 6

Although the questions raised by the supervisory status of public sector employees is important, little empirical research has been done in this area.

Wheeler (20) investigated the appropriateness of using the private sector definition of supervisor in the public sector by examining the job duties of lieutenants and captains in fire departments across the country. He found that fire department officers lack some of the authority which one would normally expect the supervisor to possess and spend a substantial proportion of their time doing the same work as rank-and-file fire fighters (21 p.733). Lieutenants, for example, on average spent 49% of their time, performing rank-and-file work. In addition, because of civil service rules and regulations, fire department officers generally lack the authority to discharge and suspend subordinates generally found in the private sector. He concludes, therefore, that public sector supervisors are a very special type of supervisor and that while fire department officers may generally be supervisors, rules appropriate for application in the private sector may not be appropriate in the public sector. This would suggest that a more rigorous definition of "supervisor" is required so as to include only bona fide supervisors within the meaning of "supervisor".

Murrmann (13) investigated the relationship between identification with management and collective bargaining representation among police supervisors in Michigan. He found that no differences in identification with management existed between sergeants who were unionized and those who were not unionized. According to Murrmann, the finding of no differences among sergeants probably reflects the fact that sergeants, as first-line supervisors, are relatively remote from management. Therefore, whether or not they bargain collectively, they perceive employment relations issues more in terms of their status as employees than in terms of representatives of management. In contrast, differences in identification with management were found for lieutenants. Lieutenants who were represented by a labor organization had statistically significantly lower identification with management than those lieutenants who did not have representation.

Murrmann notes, however, that the differences in identification with management found among lieutenants may have been both a cause and a consequence of the differences in collective bargaining status. The supervisor's decision to seek collective bargaining representation probably often results from a low level of identification with management, and, in turn the receipt of representation probably contributes to a reduction in identification with management by clarifying and accentuating the conflicting interests of the supervisor and management. Murrmann concludes that statutory distinctions should be made between first-line and higher ranking supervisors to incorporate the fact that less than bona fide supervisors will identify with the rank-and-file regardless of statutory prohibitions.

Hayford (6) classified a sample of public sector supervisors as either bona fide supervisors (individuals with supervisory titles who possess consequential managerial authority and responsibilities) or less than bona fide supervisors (individuals with supervisory titles who do not possess consequential authority or responsibility) and administered a questionnaire to examine the way in which public sector supervisors view their role. He found that bona fide supervisors generally viewed themselves as being more closely identified with management than with rank-and-file employees, while less than bona fide supervisors generally viewed themselves as being more closely identified with rank and file employees than with the management group. Hayford (8 p.651) concludes that his results suggest that first-line supervisors in public employment cannot be viewed as a single homogeneous group and that bona fide supervisors and less than bona fide supervisors are unique from one another in numerous ways. He further concludes that these differences should be reflected in statutes covering public sector supervisors.

Section 7

In a research report of the Commission in November 19, 1979 (10, p. i - iii) the following "Findings, Conclusions and Summary" were made to the Commission:

> The public sector employer continues to be confronted with the question as to whether bona fide supervisory and managerial employees should be afforded the opportunity to bargain collectively. In studying this issue, we find that a similar evolutionary development of this issue was found in the private sector labor relations. Initially, the issue tended to be resolved in favor of allowing these classes of employees being granted the right to self-organization and the right to bargain collectively with their employer.
>
> The inevitable result was that supervisors, particularly first-line, found themselves in the middle, the target of union stewards usurping much of their authority and challenging their day-to-day decisions but without support from management. Permitting these classes of employees to organize and to bargain is a prelude to strife and does not promote labor relations stability. The principal area of concern is if the employer must bargain with supervisors and managers.
>
> The primary problem the employer is confronted with is that a unionized group of supervisors and managers will ally themselves with the rank-and-file, thus depriving the employer of completely loyal and trustworthy representatives. If these groups are permitted to organize and bargain, the employer is faced with a number of daily problems:
>
> > Supervision has its primary function of directing, disciplining, and evaluating employees. If a supervisor is expected to discipline an employee and is also a union official passing on the question of resolving the dispute, we are immediately confronted with a conflict of loyalties.
> >
> > In the event a work stoppage occurs within the group, and with the well established tradition of honoring picket lines by other established unions, the employer has no employees to carry on necessary services during the work stoppage.
> >
> > Contract negotiations is far more effective if the supervisors and managers of the work group are involved in the development of employer strategy, identification of unworkable contract language and the establishment of the range of acceptable compromises. Obviously, if these employees are represented, the ability to use this valuable resource is eliminated.
>
> Private Sector Practice - It is a universal practice, and interpretation of law, that supervisory and managerial employees are excluded from

coverage under the labor relations provisions.

Federal Government Practice - The executive orders applicable to collective bargaining in the federal government sector excludes from its definition of an employee anyone serving as a supervisor. The Federal Labor Relations Council, the agency charged with administering federal labor relations, has followed a policy consistent with those of the NLRB and the federal courts under the Taft-Hartley Act. The effect has been the exclusion of supervisors from coverage and the denial of collective bargaining rights to anyone deemed to be a supervisor.

State Government Practice - State governments have taken a variety of appproaches in dealing with the dilemma posed by supervisory bargaining.

Of those states with comprehensive bargaining statutes, eight follow the example set by the private sector and the federal government and expressly exclude supervisors from coverage:

Illinois
Iowa
Kansas
Montana
New Mexico
Oregon
South Dakota
Washington

A second approach used by some states is to allow less-than-bona-fide supervisors to bargain collectively. Some of the states following this practice are:

Connecticut
Wisconsin

The final approach grants full bargaining rights but requires they be placed in autonomous units; e.g.,

Hawaii
Minnesota
Alaska
California
Michigan
New Jersey
Pennsylvania

In reference to managerial employees, the private sector, the federal government and most states, including Minnesota, exclude managerial employees.

Respectfully submitted,

Charles A. Swanson, Associate
Industrial Relations Associates, Inc.
2090 Wayzata Boulevard
Minneapolis, Minnesota 55405

BIBLIOGRAPHY

1. Abodeely, J.E. The NLRB & the Appropriate Bargaining Unit. Philadelphia: University of Pennsylvania, the Wharton School of Finance & Commerce, Industrial Research Unit, 1975 (Labor Relations & Public Policy Series, Report No. 3).

2. Balfour, A. "Rights of Collective Representation for Public Sector Supervisors," Journal of Collective Negotiations in the Public Sector Vol. 4, No. 3 (1975): 257-265.

3. Barney, D.R. "Bell Aerospace & the Status of Managerial Employees Under the NLRA," Industrial Relations Law Journal Vol. 1 (1976): 346-382.

4. Finkin, M.W. "The Supervisory Status of Professional Employees," Fordham Law Review, XLV (March, 1977): 805-834.

5. Halsey, G.D. Supervising People, New York: Harper Bros., 1946.

6. Hayford, S.L. "An Empirical Investigation of the Public Sector Supervisory Bargaining Rights Issue," Labor Law Journal Vol. 26, No. 10 (October, 1975): 641-653.

7. Hayford, S.L. & A.V. Sinicropi. "Bargaining Rights Status of Public Sector Supervisors," Industrial Relations Vol. 15, No. 1 (February, 1976): 44-61.

8. Hayford, S.L. & A.V. Sinicropi. Collective Bargaining & the Public Sector Supervisor. Chicago: International Personnel Management Association, 1976 (Public Employee Relations Library #54).

9. Helburn, I.B. & S.R. Zimmer. "The Federal Supervisor: A Comment on Executive Order 11491," Public Personnel Review Vol. 32 (January, 1971): 2-7.

10. Legislative Commission on Employee Relations. "Research Report on Supervisory and Managerial Bargaining Rights." November 1979.

11. Mintzberg, H. The Nature of Managerial Work. New York: Harper & Row, 1973.

12. Mong, J.L. "Unionized Principals: Is Your District Next?", Journal of Collective Negotiations in the Public Sector Vol. 1, No. 4 (Fall, 1972): 293-298.

13. Murrmann, K.F. "Police Supervisor Bargaining Representation & Identification With Management," Journal of Collective Negotiations in the Public Sector Vol. 7, No. 2 (1978): 179-189.

14. Rains, H.H. "Collective Bargaining in the Public Sector & the Need for Exclusion of Supervisory Personnel," Labor Law Journal Vol. 23, No. 5 (May, 1972): 275-288.

15. Sartain, A.Q. & A.W. Baker. The Supervisor & His Job. New York: McGraw-Hill Book Co., 1972.

16. Sherwood, F.P. & W.H. Best. Supervisory Methods in Municipal Administration. Chicago: International City Manager's Association, 1958.

17. Taylor, B.J. & F. Witney. Labor Relations Law (3rd. edition). Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1979.

18. Terry, G.R. Supervisory Management. Homewood, Ill.: Richard D. Irwin, Inc., 1974.

19. Wahn, E.V. "Collective Bargaining Rights of Managerial Employees in the United States & Canada," Labor Law Journal Vol. 27, No. 6 (June, 1976): 343-360.

20. Walker, C., R. Guest, & A. Turner. The Foreman on the Assembly Line. Cambridge, Mass.: Harvard University Press, 1956.

21. Wheeler, H.N. "Officers in Municipal Fire Departments," Labor Law Journal Vol. 28, No. 11 (November, 1977): 721-733.