

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

AMERICAN FEDERATION OF TEACHERS :
LOCAL 212, WFT, AFL-CIO :

Involving Certain Employees of :

MILWAUKEE AREA DISTRICT BOARD OF :
VOCATIONAL, TECHNICAL AND ADULT :
EDUCATION :

Case I
No. 8584 ME-58
Decision No. 6343-C

Appearances:

Mr. Steve Kowalsky, Representative, Wisconsin Federation of Teachers, AFT, AFL-CIO, 6525 West Bluemound Road, Milwaukee, Wisconsin, 53213, appearing on behalf of Local 212.

Mr. George K. Whyte, Jr., Quarles and Brady, Attorneys at Law, 780 North Water Street, Milwaukee, Wisconsin, 53202, appearing on behalf of the District; Mr. Bruce R. Bauer with him on the brief.

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

American Federation of Teachers, Local 212, WFT, AFL-CIO filed a petition requesting the Wisconsin Employment Relations Commission to clarify existing certified bargaining units consisting of various employees in the employ of Milwaukee Area District of Vocational, Technical and Adult Education. Upon due notice, hearing was held on January 17, 1980 and February 25, 1980 in Milwaukee, Wisconsin before James D. Lynch, Hearing Examiner. Thereafter the parties filed briefs which were received by August 14, 1980. The Commission having reviewed the record and the briefs and the parties being fully advised in the premises, hereby makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Units.

FINDINGS OF FACT

1. That American Federation of Teachers Local 212, WFT, AFL-CIO, hereinafter referred to as Local 212, is a labor organization representing employees for the purposes of collective bargaining, and that it has its principal offices at 6525 West Bluemound Road, Milwaukee, Wisconsin.

2. That Milwaukee Area District Board of Vocational, Technical and Adult Education, hereinafter referred to as the District, is a municipal employer providing vocational, technical and adult education services to the inhabitants in the Milwaukee, Wisconsin area; and that the District has its principal offices at 1015 North Sixth Street, Milwaukee, Wisconsin.

3. That for some time prior to October, 1979 Local 212 was the certified exclusive collective bargaining representative of certain employees of the District in the collective bargaining unit, hereinafter referred to as the "professional unit", which was fully described as follows:

all regular full-time teaching personnel and all regular part-time teaching personnel have a 50% or more teaching load, but excluding teaching personnel having less than a 50% teaching load, supervisory personnel (including but not limited to Deans, Associate Deans, Assistant Deans and Assistant Directors), and excluding all other administrative, managerial and confidential personnel.

4. That also for some time prior to October, 1979 Local 212 1/ was the certified collective bargaining representative of certain employees of the District in a collective bargaining unit hereinafter referred to as the "paraprofessional unit", which was fully described as follows"

all teaching paraprofessionals and those teacher aides spending more than 50% of their time in instructional student contact services, excluding supervisors and all other employees.

5. That pursuant to a Direction of Elections issued by it, the Commission, on September 26, 1979, conducted elections in three voting groups of employees of the District; that in two of said voting groups the elections conducted therein were conducted among the employees occupying the positions noted, for the purposes noted, as follows:

VOTING GROUP NO. 1

All employees occupying the classifications of Student Services Specialist I and II (but excluding Position No. 51), Student Services Specialist (CETA), Native American Specialist, Native American Recruiter, Spanish American Specialist, Spanish American Recruiter, Technician Career Education, Library, Media Technician, and Educational Services Assistant (but excluding Position No. 60) to determine whether the employees occupying such classifications desired to be included in the "paraprofessional unit" represented by Local 212.

VOTING GROUP NO. 3

All employees employed in the classifications of Nurse, Clinical Psychologist, Admissions Counselor, Guidance Counselor, Guidance Counselor (Veterans and Business-Industrial Referrals), Rehabilitation Psychologist, ABE Guidance Specialist, Counselor (Program), Special Service Counselor (Apprentice), Special Service Counselor (Veterans), Placement Counselor, Counseling Psychologist, and Women's Counselor, to determine whether the employees occupying such classifications desired to be included in the "professional unit" represented by Local 212.

6. That on October 23, 1979 the Commission certified the results of said elections, which indicated that a majority of employees eligible to vote in VOTING GROUP NO. 1 (18 of 20 claimed eligible) voted to be included in the "paraprofessional unit, and that a majority of employees eligible to vote in VOTING GROUP NO. 3 (12 of 22 claimed eligible) voted to be included in the "professional unit".

7. That in the instant proceeding the WFT seeks to accrete the following positions, which are presently not included in any collective bargaining unit, to the professional bargaining unit represented by it, contending that the occupants of said position are professional employees:

Student Services Specialist III (Apprentice)
Student Services Specialist III (Veteran's Affairs)
Student Services Specialist I (Placement)
Student Recruiter
Coordinator of the Office of Prospective Students
Student Services Specialist (Vocational Education)
Student Services Specialist III (IVR Career Information)
Student Services Specialist III (Basic Skills Evaluation).

1/ At least prior to September 20, 1979 District Council 40, AFSCME, AFL-CIO and Local 212 jointly represented the employees in said unit. Prior to the date noted AFSCME withdrew as a joint representative.

8. That the District contends that the positions of Student Services Specialist III (Apprentice) and (Veteran's Affairs), Student Services Specialist I (Placement) and Student Recruiter are not professional positions; that the position of Coordinator of the Office of Prospective Students is both supervisory and managerial; and that the positions of Student Services Specialist III, (Vocational Education), (IVR Career Information), and (Basic Skills Evaluator), all employed in the Institute for Vocational Readiness, lack a community of interest with other District employees, and further that said positions are also paraprofessional.

9. That the positions of Student Services Specialist III (Apprentice) and Student Services Specialist III (Veteran's Affairs) are contained within the District's Student Services Department within the General and Special Counseling area; that the primary focus of said positions is to direct the application, interviewing and orientation process for incoming students in each population; that included within these tasks are those of interviewing students to determine their educational and vocational background and goals, familiarizing these students with programs, devising programs of study in cooperation with students, and directing students to other departments when appropriate; that the incumbents are often called upon to help students with emotional, physical or financial problems, which will at times require referrals to appropriate teachers and professional counselors; that the incumbents' chief contact with students appears to be during the introductory phases of their tenure at the District, although both are available to students on an ongoing basis and are often consulted by them from time to time; that both incumbents attend the regular meetings of General and Special Counseling personnel; that the Apprentice position acts as a liaison between students, faculty, advisory groups, and employers and their personnel representatives, while the Veteran's Affairs position acts as a liaison between students, faculty, administrative personnel and other governmental agencies which relate to veterans, their benefits and entitlement thereto; that said positions do not require certification, nor are they engaged in teaching; that the minimum requirements for the Apprentice position are an associate degree in Applied Science in an apprenticeable area and seven years experience in an apprenticeable occupation, and the requirements for Veteran's Affairs position are a bachelor's degree from an accredited college or university, with major coursework in guidance psychological or related field, and four years of progressively responsible work experience in admissions, registration or student advising.

10. That the positions of Student Services Specialist I (Placement) and Student Recruiter are contained in the Student Services Department within the Placement and Recruiting area; that the primary focus of the Placement position is to provide vocational career advice to both students enrolled and seeking part time work with the District, and to graduating students; that the Placement position is responsible for maintaining a list of District job openings, and participating in an orientation program for graduates in order to provide information on the method to apply for jobs, and the occupant of the position acts as a liaison between current and former students, teachers, employers, educational institutions, and various other entities providing educational and vocational opportunities; that the incumbent may make referrals of students to the professional counselors of the District; that the primary focus of the Student Recruiter is to coordinate the work of students, who go from door to door within neighborhoods to interest prospective students in attending the District; that the occupant of the position is also responsible for follow up work with these prospective students, and meets with prospective and entering students to advise them regarding admissions, registration, financial aids and other institutional procedures; that the minimum qualifications for the placement position is either a bachelor's degree from an accredited college or university, with major coursework in a relevant field by an associate degree in education, social work or other related field and two years related work experience; and for the Recruiter position, either high school graduation or G.E.D. equivalent, and two years of work experience in a related activity.

11. That the parties are in agreement that the Coordinator of the Office of Prospective Students, a recently created position, is a professional position; that the occupant of the position serves on the District's recruiting committee; that among his responsibilities is the coordination of recruitment in some fourteen geographical areas, and in that regard supervises and coordinates schedules of those involved in said recruiting efforts, which throughout the year

may involve as many as 100 employees, and in performing such tasks the occupant coordinates such activities with deans, associate deans and coordinators; that the occupant of the position is required to supervise employees, the number of whom will increase upon the completion of the final plans relating to recruitment program, and in that regard the position requires evaluation of subordinates and the power to effectively recommend the training, disciplining, etc., of employees.

12. That the positions of Student Services Specialist III (Vocational Evaluation), Student Services Specialist III (IVR Career Information) and Student Services Specialist III (Basic Skills Evaluation) are assigned to the Institute for Vocational Readiness, which is a diagnostic project dealing mainly with CETA eligible persons in the community in order to assess their interest, abilities, aptitudes, and reading levels in a week long assignment process and to make recommendations regarding same to the agencies referring these people to the institute; that there are nine employees assigned to the Institute under the direction of Dr. Stockey the project coordinator, and the Institute is within the Student Services Division and is under Dr. Deady's control.

13. That the Student Services Specialist III (Vocational Evaluation) position is responsible for assessing and evaluating client reading, writing, speaking, and computational skills and, for prescribing remedial programs; that the occupant of this position determines and administers appropriate tests, compiles and evaluates test data and prepares related reports; that the position requires a thorough knowledge of testing, test validation concepts, research methods and procedures, including statistical application; and that the minimum training and experience required for the position is a master's degree from an accredited college or university, with major coursework in guidance, student personnel vocational evaluation or a related field plus two years of progressively responsible work experience in vocational evaluation.

14. That individual occupying the position of Student Services Specialist III (IVR Career Information) is responsible for providing clients with career information and guidance as well as coordinating diagnostic services, for gathering background information on the client; leads them in group sessions involving self-esteem, decision making and value clarification, participates in staffings to coordinate and correlate client information and participates in diagnosis and prescription for the client; that the minimum training and experience required for this position is a master's degree from an accredited college or university, with major coursework in guidance, education, student personnel or a related field, plus two years of progressively responsible work experience in student personnel or student advising.

15. That the individual occupying the position of Student Specialist III (Basic Skills Evaluation) position is responsible for assessing and evaluating client reading, writing, speaking, and computational skills as well as for prescribing remedial programs; that the occupant determines and administers appropriate tests, compiles and evaluates test data and prepares related reports; that the position requires a knowledge of testing and diagnostic procedures; that the minimum training and experience required for this position is a Bachelor's Degree from an accredited college or university, with major coursework in vocational evaluation or a related field, plus four years of progressively responsible work experience in basic education or vocational evaluation.

Based upon the above and foregoing Findings of Fact, the Commission hereby makes and issues the following

CONCLUSIONS OF LAW

1. That the following positions, occupied, or to be occupied, by individuals in the employ of the Milwaukee Area District Board of Vocational, Technical and Adult Education are not professional positions within the meaning of Section 111.70(1)(1) of the Municipal Employment Relations Act, and that the inclusion of said positions in the paraprofessional collective bargaining unit described in para. 4 of the Findings of Fact will effectuate the policies expressed in Section 111.70(4)(d)2.a. of the Act:

Student Services Specialist III (Apprentice)
Student Recruiter

2. That the following positions, occupied, or to be occupied, by individuals in the employ of the Milwaukee Area District Board of Vocational, Technical and Adult Education are professional positions within the meaning of Section 111.70(1)(1) of the Municipal Employment Relations Act, and that the inclusion of said positions in the professional collective bargaining unit described in para. 3 of the Findings of Fact will effectuate the policies expressed in Section 111.70(4)(d)2.a. of the Act:

Student Services Specialist III (Veteran's Affairs)
Student Services Specialist I (Placement)
Student Services Specialist III (Vocational Education)
Student Services Specialist III (IVR Career Information)
Student Services Specialist III (Basic Skills Evaluation)

3. That the duties and responsibilities of the incumbent of the position of Coordinator of the Office of Prospective Students are sufficient in combination and degree to conclude that the position is a supervisory position within the meaning of Section 111.70(1)(o) of the Act, and that therefore said position cannot be included in any collective bargaining unit of employees of Milwaukee Area District Board of Vocational, Technical and Adult Education.

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

ORDER CLARIFYING COLLECTIVE BARGAINING UNITS

IT IS HEREBY ORDERED

1. That the position of Student Services Specialist III (Apprentice) and the position of Student Recruiter be, and the same hereby are accreted to the paraprofessional collective bargaining unit described in para. 4 of the Findings of Fact.

2. That the following positions be, and the same hereby are accreted to the professional collective bargaining unit described in para. 3 of the Findings of Fact:

Student Services Specialist III (Veteran's Affairs)
Student Services Specialist I (Placement)
Student Services Specialist III (Vocational Education)
Student Services Specialist III (IVR Career Information)
Student Services Specialist III (Basic Skills Evaluation)

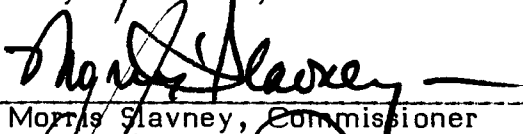
3. That the position of Coordinator of the Office of Prospective Students be, and the same hereby is, not included in any bargaining unit of employees in the employ of the Milwaukee Area District Board of Vocational, Technical and Adult Education.

Given under our hands and seal at the
City of Madison, Wisconsin this 11th
day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

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

The instant petition filed by Local 212, as amended at hearing, seeks to accrete positions to the professional bargaining unit represented by it. The District, on the contrary, asserts: (1) that the occupants of the Student Recruiter, Student Services Specialist III (Apprentice), Student Services Specialist III (Veteran's Affairs), and Student Services Specialist I (Placement) positions are, non-professional in character and, thus, are appropriate for inclusion in the paraprofessional bargaining unit; (2) that the occupant of the Coordinator of the Office of Prospective Students has both supervisory and managerial responsibilities; and (3) that the occupants of the positions of Student Services Specialist III (Vocational Evaluation), Student Services Specialist III (IVR Career Information) and Student Services Specialist III (Basic Skills Evaluation) are paraprofessional in nature; but should the Commission deem them to be professional employees then they lack a community of interest with employees in the professional bargaining unit. Specific facts regarding these positions are recited in the Findings and will not be repeated here. The District contends that regardless of the unit placement, the occupants of these positions must be given an opportunity to vote for inclusion.

The Commission is mandated by Section 111.70(1)(1) of MERA to consider the following criteria in determining whether municipal employees occupy professional positions.

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

We have reviewed the evidence and arguments of the parties, and we are satisfied that the evidence supports the conclusion that, of the positions in issue, only the Student Services Specialist III (Apprentice) and the Student Recruiter are not professional, but rather paraprofessional positions, and that the remaining positions are professional. Further, we are also satisfied that the Coordinator of the Office of Prospective Students is assigned duties and responsibilities in sufficient combination and degree to warrant the conclusion

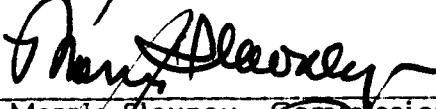
that the incumbent thereof is a supervisory employee. Contrary to the view of the District, and primarily because the accretion of the positions involved herein to the units involved would not affect the majority status of Local 212 as the bargaining representative of the employees in either unit, we are accreting said positions to the existing units without an election among the occupants of the positions in issue.


Dated at Madison, Wisconsin this 11th day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner