

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 AMERICAN FEDERATION OF TEACHERS :
 LOCAL 212-MATC : Case 1
 : No. 41163 ME-288
 Involving Certain Employes of : Decision No. 6343-D
 :
 MILWAUKEE AREA VOCATIONAL, TECHNICAL :
 AND ADULT EDUCATION DISTRICT :
 :

Appearances:

Mr. Steve Kowalsky, Representative, Wisconsin Federation of Teachers,
 2021 Atwood Avenue, Madison, Wisconsin 53704 and Mr. Frank
 Shansky, Director of Labor Relations, American Federation of Teachers
 Local 212-MATC, 703 West Juneau Avenue, Milwaukee, Wisconsin 53223,
 appearing on behalf of the Petitioner.
QQuarles & Brady, Attorneys at Law, by Mr. David E. Kern, 411 East
 Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing
 on behalf of the Milwaukee Area Vocational, Technical and Adult
 Education District.

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

American Federation of Teachers, Local 212-MATC having, on October 5, 1988, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing bargaining unit by determining whether the following positions should be included in said unit: Academic Support Specialist, Affirmative Action/Equal Opportunity Specialist, Coordinator-Admissions/Information/Recruitment, Coordinator-Student Affairs, Coordinator-Urban Outreach Program, Financial Aids Specialist, and Supervisor, Student Publications; and hearing in the matter having been held on February 21, 1989 and April 11, 1989 in Milwaukee, Wisconsin before Examiner Lionel L. Crowley, a member of the Commission's staff; and a stenographic transcript having been made of the hearing and the parties having filed post-hearing briefs which were received on June 12, 1989; and the Commission, having considered the evidence and the arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That American Federation of Teachers Local 212-MATC, hereinafter referred to as the Federation, is a labor organization and has its offices at 703 West Juneau Avenue, Milwaukee, Wisconsin 53233.
2. That Milwaukee Area Vocational, Technical and Adult Education District, hereinafter referred to as the District, is a municipal employer and has its offices at 1015 North Sixth Street, Milwaukee, Wisconsin 53203.
3. That the Federation is the certified exclusive bargaining representative of District employes in a collective bargaining unit described as follows:

All regular full-time teaching personnel and all regular part-time teaching personnel having 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

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and Assistant Directors) and excluding all other administrative, managerial and confidential personnel.
 (Amended by Dec. No's. 8736-B, 16507-A (WERC, 6/79) and Dec. No. 6343-C (WERC, 11/81)).

and that said collective bargaining unit includes the positions of School Nurse and Counselor.

4. That during the course of the hearing in this matter, the parties reached a stipulation on five of the seven positions in dispute with the Financial Aid Specialists and Academic Support Specialists being included in the paraprofessional bargaining unit, the Affirmative Action/Equal Opportunity Specialist and Coordinator-Urban Outreach Program being excluded from the unit

set forth in Finding of Fact 3 above as managerial and the Coordinator-Admissions/Information/Recruitment being included in the unit set forth in Finding of Fact 3 above.

5. That the Federation contends, contrary to the District, that the positions of Coordinator-Student Affairs and Supervisor, Student Publications are occupied by professional employes and should be included in the professional unit described in Finding of Fact 3 rather than the paraprofessional unit, which is also represented by the Federation; and that the District contends, contrary to the Federation, that if the positions are determined to be occupied by professional employes, they do not share a sufficient community of interest with employes in the professional unit described in Finding of Fact 3 above to be included therein.

6. That the current written position description for the position of Coordinator - Student Affairs provides as follows:

NATURE OF WORK:

Under general supervision of the Dean, Student Affairs, to coordinate student organizations and activities on campus, to serve as advisor in resolution of academic or personal problems and to assist in the development of student leadership and social skills. Work is generally diversified requiring the making of judgement, analysis and decisions within established procedures. Supervision received is general in nature using established procedures and general objectives occasionally referring to supervisor for policy clarification or interpretation.

PRINCIPAL DUTIES AND RESPONSIBILITIES:

1. Coordinates and supervises student organizations on assigned campus; directs fund raising, club meetings, leadership programs and related student activities.
2. Advises students with educational or personal problems; refers students for counseling as needed; resolves discipline problems or grievances.
3. Provides direction for student senate; coordinates senate work in legislation, community involvements, and charity projects; advises student planning committee.
4. Prepares student activities budget; oversees revenue projection, expenditures evaluation and coordination of purchases.
5. Plans and supervises activity calendar, and campus promotional and advertising materials; coordinates student orientation activities.
6. Maintains student records; prepares related reports as needed; maintain equipment and supplies for student affairs rooms.
7. Plans and coordinates new entertainment programs for the campus.

8. Coordinates student housing at assigned campus.
9. Performs related duties as required or assigned.

QUALIFICATIONS

Requires a Bachelor's degree in Education, Counseling or Human Resources and considerable experience in student leadership programs; or any equivalent combination of experience and training which provides the necessary knowledge, abilities and skills to include:

1. Knowledge of the functions and goals of a student activities program.
2. Ability to organize, plan, develop and edit various student publications.
3. Ability to organize, plan and execute student programs in an independent manner.
4. Ability to communicate effectively through both oral and written means.
5. Ability to establish and maintain effective working relationships with staff, faculty, students, and general public.

7. That the District employs a total of five Coordinators of Student Affairs, one each at the North, South and West campuses and two at the Milwaukee campus; that the five Coordinators have bachelor degrees and two have masters degrees, although at the time of her hire, one Coordinator, Cathy Lechmaier, did not have a bachelors degree; that the Coordinator's degrees are in different areas and not in student personnel administration and there is no requirement by the District for a degree in that area; that the Coordinator's duties include advising and assisting students on non-academic problems and concerns including housing, child care, transportation, student discipline, student complaints, as well as acting as mediator mediating disputes between students and faculty, acting as advisor for the student senate and coordinating student organizations and other aspects of student life outside the classroom; that the Coordinator -Student Affairs is not required to be certified as a classroom instructor or as a counselor and does not teach in a classroom setting or have any classroom instruction responsibilities; that the Coordinators do not counsel students with educational or personal problems but are instructed and required to refer students to counselors; and that the Coordinators are paid in a range of \$1000 to \$1400 bi-weekly.

8. That the current written position description for the position of Supervisor, Student Publications provides as follows:

NATURE OF WORK:

Under general supervision of the Dean, Student Affairs, oversees and provides technical instruction for student-publication staffs, and management of their budgeting operations.

ILLUSTRATIVE EXAMPLES OF WORK:

- . Organizes activities and provides daily instruction for student publications staffs.
- . Recruits and maintains volunteer students to produce student publications.
- . Establishes budgets and oversees departmental financial transactions; supervises staff in sales of advertising space.
- . Schedules publication dates and ensures adherence to deadlines.
- . Selects and trains editor of student publications; supervises student budgeted employees.

- . Chairs Student Publications Committee; advises students about journalism seminars and conventions; represents MATC at advisor workshops.
- . Advises student journalists of First Amendment rights and responsibilities.
- . Maintains communication between reporters and faculty administration news sources; arbitrates disputes between editors, staff members, or related groups.

QUALIFICATIONS:

Requires experience in journalism or student publications, and a Bachelor's degree in Graphic Arts, Journalism, or related field; or any equivalent combination of experience and training which provides the necessary knowledge, abilities, and skills.

9. That the District employs one Supervisor of Student Publications, presently Thomas Gould, who has a bachelor of arts degree in journalism; that the Supervisor of Student Publications duties are to recruit and train student volunteers to produce regular student publications including the MATC Times, a bi-weekly newspaper, the Matrix, an annual magazine, and the MATC Today, a student orientation publication; that the Supervisor trains the students in all aspects of the student newspaper by on the job training but no credit is received by the students for their work on the newspaper; that the District has no journalism major or journalism program but only a three credit basic journalism course taught in the English Department; that Gould does not possess state certification as an instructor or counselor for his position; that Gould does no classroom instruction and advises students as to the content of an article but does not act as a censor or exercise control over any article, some of which in the past have been critical of faculty members or the administration; that Gould is paid \$37,000 per year; and that Gould puts on seminars, training sessions and workshops for high schools on how the techniques used by the MATC newspaper can be applied to high school newspapers.

10. That the duties of the Coordinator - Student Affairs are predominately intellectual and varied in character involving the consistent exercise of discretion and judgment in their performance; that the character of the work and results accomplished cannot be standardized in relation to a given period of time; but that said positions do not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

11. That the duties of the Supervisor - Student Publications are predominately intellectual and varied in character involving the consistent exercise of discretion and judgment in their performance; that the character of the work and results accomplished cannot be standardized in relation to a given period of time; and that said positions require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

On the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the occupants of the position of Coordinator - Student Affairs are not professional employes within the meaning of Sec. 111.70(1)(L), Stats.
2. That the occupant of the position of Supervisor, Student Publications is a professional employe within the meaning of Sec. 111.70(1)(L), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

1. That the position of Coordinator - Student Affairs shall remain excluded from the professional bargaining unit described in Finding of Fact 3.

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(Footnote 1/ continued on Page 6.)

2. That the position of Supervisor, Student Publications is hereby included in the professional bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of October, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

(Footnote 1/ continued from Page 5.)

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

POSITIONS OF THE PARTIES

The Federation contends that both positions in dispute are professional. It asserts that the duties are predominately intellectual and varied in character and necessitate exercise of independent judgement and discretion. It refers to the job description of the Coordinator - Student Affairs which states that the "work is generally diversified requiring the making of judgments, analysis and decisions within established procedures." It further notes that the Student Affairs Annual Report states about Coordinators, in part, as follows:

"Essentially they are an amalgam of counselor, administrator and instructor performing a wide variety of functions that concern and affect student life."

Additionally, it argues that the position of Coordinator - Student Affairs requires a bachelor degree, and that despite it being a relatively new field, several universities offer a graduate course of study in this area. The Federation asserts that the position description for the Supervisor, Student Publications, requires a degree in Graphic Arts or Journalism plus experience. The Federation contends that the rates of pay for these positions are comparable to other MATC professionals. It concludes that the evidence establishes that the positions satisfy the statutory requirements for a professional employe.

With respect to the appropriateness of the unit, the Federation submits that there is only one professional unit at the District which is made up of teaching and non-teaching personnel, e.g., nurses. It asserts that the two positions in question have extensive student contact. The Federation rejects the District's arguments that because these positions do not have VTAE certification and require some intervention between students and faculty, they should be in a separate unit. It notes that school nurses have no VTAE certification and argues that the evidence failed to show that there would be any conflict between the Coordinators - Student Affairs or the Supervisor, Student Publications and faculty and counselors which would support placement in a separate unit. The Federation maintains that there would be excessive fragmentation to have a separate professional unit of six employes. It concludes that the community of interest is clear and the extensive student contact makes placement in the professional unit appropriate.

The District contends that the two positions are not professional and, if they are that they do not share a community of interest with the professional bargaining unit employes. It submits that the positions fail to meet the statutory criteria for a professional employe because the positions do not require knowledge of an advanced type in a field of science or learning acquired by a prolonged course of specialized intellectual study, as distinguished from a general academic education. The District notes that a bachelor's degree is not required and one Coordinator was hired without one. It argues that positions which do not require an advanced degree in a specialized area, especially where no certification or license is required, are not "professional". The District insists that these positions do not require any certification and they do not provide any instruction, formal teaching or counseling and, in fact, are instructed not to do any counseling. It points out that no lesson plans, tests for competency or instructional objectives are prepared by the persons in these positions. It maintains that although some incumbents have degrees and certifications, such are not specific requirements for the positions in question. It concludes that the positions are not "professional" employes within the meaning of the Act and cannot be accreted into the professional unit.

The District claims that even if the positions are found to be professional, placement in the professional unit is not appropriate because these positions do not share a community of interest with teachers and counselors. It asserts that teachers instruct students in a formal classroom

setting while the Supervisor, Student Publications merely advises students on how to create the publications for which students receive no credit and are not graded. The District contends that the Coordinator only counsel students in a non-clinical sense, perform no crisis counseling and refer students to guidance counselors. The District points out that these positions do not have wages similar to the teachers and counselors nor do they have the same supervisors. The District maintains that these positions need to be independent or non-aligned with teachers and counselors because of their role as mediators or liaisons between students and faculty. The District concludes that the Coordinators and Supervisor, Student Publications do not have a community of interest with teachers and counselors because of the difference in skills, areas of studies, certification requirements, duties, wages, supervision and working conditions.

DISCUSSION

Section 111.70(1)(L), Stats., defines the term "professional employe" as follows:

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 process; or
2. Any employe 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 employe as defined in subd. 1.

All of the criteria noted above must be present in order to find an employe to be professional. 2/ The above definition does not limit professional employes to those possessing college degrees 3/, or to those possessing specialized bachelor's degrees and professional status is not determined solely on the basis of state certification and licensing. 4/ Whether a position meets the requirements of Sec. 111.70(1)(L)1.d. is determined by the work demands of the job and whether the knowledge required to meet those demands is of the type customarily acquired through the means specified in 1.d. 5/

2/ Milwaukee County, Dec. No. 14786-B (WERC, 4/80).

3/ Outagamie County (District Attorneys Office), Dec. No. 2143-A (WERC, 10/86).

4/ Kenosha Vocational, Technical and Adult Education District No. 6 (Gateway Technical Institute), Dec. No. 14381 (WERC, 3/76), City of Cudahy, Dec. No. 19507 (WERC, 3/82).

5/ Chippewa Valley Technical College, Dec. No. 22230-A (WERC, 5/88).

A review of the job descriptions and the testimony presented in this matter establishes that the District requires a bachelor's degree and considerable experience for the Coordinator - Student Affairs position or an equivalent combination of experience and training to perform the job. The record indicates that all the employees in the position have a degree. The Coordinator - Student Affairs is responsible for all non-academic areas of student life and the coordination of student organizations. 6/ The Coordinator has the authority to mediate disputes between students and faculty 7/ and refers students to a counselor as needed. 8/ The job description indicates that the nature of the work requires judgement, analysis and decision making within established procedures. 9/ The job duties are predominately intellectual in character and vary greatly, involve the exercise of discretion and judgment and the output of the job cannot be standardized in relation to a given period of time.

The District does not seriously challenge that the position meets the first three criteria of the Sec. 111.70(1)(L)1 definition but does assert that the fourth criterion of knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized intellectual study is not met. We conclude that the District is correct. The Federation did present evidence that there are colleges and universities who have degree programs which would provide the knowledge necessary to perform the Coordinator's duties. However, the record as a whole persuades us that such knowledge is still not "customarily" acquired through specialized degree programs. Therefore, the positions do not meet the criterion of Sec. 111.70(1)(L)1.d., Stats. and are not professional.

With respect to the Supervisor, Student Publications, the position description requires a bachelor's degree in Graphic Arts, Journalism or related field or any equivalent combination of experience and training. 10/ The incumbent has a bachelor's degree in journalism. 11/ The duties of the Supervisor of Student Publications are to recruit and train students in the act of producing the District's student publications. 12/ No academic credit is received by the students for this work, and the Supervisor does not have formal classes, lesson plans, tests or grades. The instruction is akin to on-the-job training and the Supervisor directs and advises students in a wide variety of areas including art work, design and layout, film processing, and writing captions. He also teaches students techniques of selling advertising and the business aspects of the paper.

As was true for the Coordinator position, the record establishes and the District does not contest that the Supervisor meets the first three criteria of Sec. 111.70(1)(L)1, Stats. Thus, the critical question again becomes whether the position requires knowledge customarily by a prolonged course of specialized intellectual instruction at an institution of higher learning. On balance, we believe the record supports a conclusion that the knowledge needed by the Supervisor to perform his duties is customarily acquired through a degree program in journalism. Thus, we find this position to be professional.

The District argues that even if we find the Supervisor to be a professional employe, we should not include said position in the existing professional unit. We disagree. We have previously concluded that the existing unit should include all professionals who work with student and/or teachers in support of the educational program. 13/ Thus, the existing unit includes not only those professionals who teach but also nurses and counselors whose duties generally support the educational program. In essence, we have already concluded that there is a sufficient community of interest among the various professionals employed by the District to warrant inclusion in a single unit. In the context of this broad unit, we think it clear that the Supervisor, Student Publication position falls within the confines of the existing unit.

6/ TR - 11, 23, 28.

7/ TR - 13.

8/ TR - 21, 43, 79.

9/ Ex - 1.

10/ Ex - 5.

11/ TR - 48.

12/ TR - 50, Ex -5.

13/ Milwaukee Area Board of Vocational, Technical and Adult Education District No. 9, Dec. Nos. 8736-B, 16507-A (WERC, 6/79).

Lastly, the District argues that inclusion of the Supervisor, Student Publications position in the unit will make it more difficult to maintain the existing freedom of student publications to print articles critical of faculty members. We see nothing in the record which would warrant concluding that inclusion in the unit and avoidance of censorship are mutually exclusive. Even if such evidence were present, it would not be a basis for concluding that a separate one person unit would be appropriate under Sec. 111.70(4)(d), Stats.

Dated at Madison, Wisconsin this 17th day of October, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner