

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of  
MILWAUKEE PUBLIC SCHOOLS  
Involving Certain Employes of  
MILWAUKEE PUBLIC SCHOOLS

Case 5  
No. 53315 ME-811  
Decision No. 6595-C

Appearances:

Mr. Thomas J. Beamish, Assistant City Attorney, 200 East Wells Street, Room 800, City Hall, Milwaukee, Wisconsin 53202, on behalf of the Milwaukee Public Schools.  
Perry, Lerner & Quindel, S.C., Attorneys at Law, by Mr. Richard P. Perry, 823 North Cass Street, Milwaukee, Wisconsin 53202-3908, on behalf of the Milwaukee Teachers' Education Association.

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

Milwaukee Public Schools filed a petition on November 6, 1995 requesting that the Wisconsin Employment Relations Commission clarify a bargaining unit of certain employes of the Milwaukee Public Schools to exclude the positions of Community Recreation Specialist and Activity Specialist on the grounds that the positions are supervisory. The Commission assigned Debra L. Wojtowski, a member of its staff, to act as an examiner and to conduct a hearing which was held on March 21, 1996 in Milwaukee, Wisconsin. The parties waived written briefs. A transcript of the hearing was provided to the Examiner on March 26, 1996. The Commission, having considered the record evidence and the parties' arguments and being fully advised in the premises, issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Milwaukee Teachers' Education Association, referred to below as the Association, is a labor organization which has its offices located at 5130 West Vliet Street, Milwaukee, Wisconsin 53208.

No. 6595-C

2. Milwaukee Public Schools, referred to below as the District, is a municipal employer which has its offices located at 5225 West Vliet Street, Milwaukee, Wisconsin 53201-2181.

3. In Milwaukee Board of School Directors, No. 6595 (WERC, 2/64); Dec. No. 6595-A (WERC, 8/73) and Dec. No. 6595-B (WERC, 9/73), the Commission certified the Association as the exclusive bargaining representative for a unit consisting of

all regular teaching personnel teaching at least fifty percent of a full teaching schedule (including Recreation Instructor IV and V, and Vice Principals teaching a full schedule) and Traveling Music Teachers who teach at least 50 percent of a full teaching schedule in the employ of the Board of School Directors of the City of Milwaukee, excluding substitute *per diem* teachers, office and clerical employes, and all other employes, supervisors and executives. (Dec. No. 6595-B, WERC (9/73)).

4. On November 6, 1995, the District filed a unit clarification petition wherein it contends that the positions of Community Recreation Specialist and Activity Specialist should be excluded from the bargaining unit described at Finding of Fact 3 above because such positions are supervisory under Sec. 111.70(1)(o) 1, Stats. At the time of the hearing, the following individuals were employed in these positions:

**Community Recreation Specialist**

Luedtke, Sandra  
Englehart, Ron  
McDermott, Kathy  
Richling, John  
Bell, Eugene  
Rush, Robert  
Johnson, Forrest  
Rutkowski, Barbara  
Laeser, Heidi  
Childs, Gary  
Rivas, Carmen  
Molbeck, Bill  
Dettman, Gary  
Hinz, Charles  
Grant, Vicki  
Bennett, Donald

**Activity Specialist**

Miller, James (Bosco)  
Cortes, Carmelo  
Weber, Anthony  
Jasna, Erica  
Beatty, Larry

5. At the hearing, the parties stipulated on record that the Community Recreation Specialists and the Activity Specialists regularly perform the following duties:

". . .interview prospective and part-time employees. . . make the decision to hire part-time employees. . . evaluate the performance of part-time employees. . . make the decision on a regular basis whether to rehire part-time employees or not -- based on their evaluation of such employees or based on a review of the evaluation performed by other community recreation specialists or activity specialists.

On occasion, discipline employees. . . regularly assign employees duties and hours. . . and prepare budgets with respect to their work sites.

With respect to the part-time employees referred to in this stipulation, they are paid on an hourly basis every two weeks. Their summer employment averages between 30 and 40 hours per week for summer employment. They have a return rate of between 50 and 60 percent each summer.

With respect to the fall, winter and spring part-time employees, they are paid on an hourly basis every two weeks. Their average hours are approximately between 10 and 18 hours per week. They are covered by unemployment compensation, workers' compensation, many are MPS employees as either teachers, paraprofessionals, aides, secretaries, in their full-time employment. . . These employees. . . receive. . . background checks concerning possible criminal behavior, as do other employees of MPS. . ."

6. The Community Recreation Specialists and Activity Specialists exercise supervisory authority in sufficient combination and degree to be deemed supervisory employes.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the

following

CONCLUSION OF LAW

The occupants of the positions of Community Recreation Specialist and Activity Specialist are supervisors within the meaning of Sec. 111.70(1)(o)(1), Stats., and are therefore not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

The positions of Community Recreation Specialist and Activity Specialist are hereby excluded from the bargaining unit described at Finding of Fact 3, above.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of May, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

---

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.

(Footnote 1/ continues on the next page.)

---

(Footnote 1/ continues from previous page.)

(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.

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.

MILWAUKEE PUBLIC SCHOOLS

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

This proceeding was initiated by a unit clarification petition filed by the District to exclude the positions of Community Recreation Specialist and Activity Specialist from the bargaining unit described at Finding of Fact 3 above.

At the hearing, the parties stipulated that employes in the positions of Community Recreation Specialist and Activity Specialist interview, hire, evaluate, discipline, determine whether to rehire, and assign the duties and hours of part-time employes in their department. The District asserts that these responsibilities necessitate a finding that these employes are supervisors. At hearing, the Association indicated that based on the stipulated facts, it believed the Commission would find these employes to be supervisors under Sec. 111.70(1)(o)(1), Stats.

Under that statute, the Commission considers the following factors in determining if a position is supervisory in nature:

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

the supervision of employes. 2/

Applying these factors to the instant facts, we find that employes in the positions of Community Recreation Specialist and Activity Specialist are supervisory employes.

Therefore, because Community Recreational Specialists and Activity Specialists are supervisory employes, they are properly excluded from the unit described at Finding of Fact 3 above.

Dated at Madison, Wisconsin, this 13th day of May, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

---

2/ Douglas County, Dec. No. 7831-A (WERC, 12/94).