

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION

Involving Certain Employees of

RACINE UNIFIED SCHOOL DISTRICT

Case 1
No. 54328
ME(u/c)-848

Decision No. 7053-F

APPEARANCES

Mr. Frank L. Johnson, Director of Employee Relations, Racine Unified School District, 2220 Northwestern Avenue, Racine, Wisconsin, 53402, for the District.

Mr. Patrick J. Farley, Associate Counsel and **Mr. Anthony L. Sheehan**, Staff Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, Madison, Wisconsin, 53708-8003, for the Association.

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

On July 29, 1996, the Racine Education Association (herein the Association) filed a petition with the Wisconsin Employment Relations Commission asking the Commission to determine whether Health Care Coordinators in the Racine Unified School District (herein the District) should be included in either of two bargaining units represented by the Association. No hearing was held, as the facts were stipulated by the parties in a document received March 17, 1997. The Association and the District filed written arguments on May 1, 1997, and May 5, 1997. The Association submitted a reply brief on May 23, 1997. The Commission, being fully advised in the premises, hereby issues the following

7053-F

FINDINGS OF FACT

By stipulation, the parties have agreed that the facts are as follows:

1. The Association was certified as the exclusive bargaining representative by the Wisconsin Employment Relations Board on April 28, 1965, for all regular full-time and regular part-time certified teaching personnel employed by the District, but excluding on call substitute teachers, interns, supervisors, administrators, and directors.

2. Over the years the District and the Association have agreed to expand the certified unit to include the following classifications of employees: physical therapists, guidance counselors, school social workers, school psychologists, occupational therapists, audiologists, A-V specialists, exceptional education community vocational instructors, diagnosticians, speech helping clinicians, exceptional education media teachers, program support teachers, at-risk coordinators, building coordinators, bilingual coordinators, early childhood curriculum specialists, multi-cultural coordinators, work experience coordinators, research associates, and wellness coordinators.

3. On August 11, 1994, the Wisconsin Employment Relations Commission concluded that a collective bargaining unit that includes both municipal employees of a school district who hold and whose employment requires that they hold a license issued by the State Superintendent of Public Instruction under Sec. 115.28(7), Wis. Stats., and municipal employees of a school district who do not hold and whose employment does not require that they hold such a license is not an appropriate unit for the purposes of collective bargaining within the meaning of Sec. 111.70(1)(b), Wis. Stats. As a result, the multi-cultural coordinator, the research associates, and the wellness coordinator were removed from the bargaining unit and placed into a separate unit known as unit #2. The Racine Unified School District currently has two separate professional bargaining units, as defined under Sec. 111.70, Wis. Stats., represented by the Racine Education Association.

4. The District and the Association have been parties to a series of collective bargaining agreements which govern the wages, hours and working conditions of the employees in the bargaining unit for approximately 25 years. The most recent agreement expired on August 24, 1993. A copy of the most recent collective bargaining agreement is attached as Exhibit A and the facts contained therein are incorporated into this stipulation.

5. The District and the Association have been engaged in negotiations for successor agreements to the one which expired on August 24, 1993. The parties have met to bargain with respect to the 1993-95 collective bargaining agreement for unit #1 on at least thirteen (13) occasions. The parties have met to bargain with respect to the 1995-97 collective bargaining agreement for unit #1 on at least nine (9) occasions. The parties have met to bargain with respect to the 1993-95 collective bargaining agreement for unit #2 on at least one (1) occasion. A bargaining proposal for unit #2 was made by the school district and is attached as Exhibit B

and the facts contained therein are incorporated into this stipulation. The Racine Education Association has not yet made a proposal with respect to unit #2.

6. The District implemented a Qualified Economic Offer as defined and permitted by Sec. 111.70, Wis. Stats., with respect to unit #1 for the 1993-95 school years. That QEO is presently being challenged before the WERC.

7. There are approximately 1,640 professional employees in bargaining unit #1. The positions of these employees all require a license issued by the State Superintendent of Public Instruction under Sec. 115.28(7), Wis. Stats. There are approximately seven (7) professional employees in bargaining unit #2. These employees may or may not have a license issued by the State Superintendent of Public Instruction under Sec. 115.28(7), Wis. Stats., but their employment does not require this type of licensure.

8. The District currently employs five (5) health care coordinators who are currently not represented by any labor organization for the purposes of collective bargaining. Their names and level of education are: Marla Blom, BSN, RN; Kathleen Christiansen, Med, BSN, RN; Myra Kahle, BSN, RN; Sandra Leicht, BSN, RN; Christine Oertel, MSN, BSN, RN. They are not required to be licensed by the Department of Public Instruction. RN: Registered Nurse, BSN: Bachelor of Science in Nursing, MSN: Master of Science in Nursing.

9. The District also has seven (7) other bargaining units. The specifics of each unit is attached as Exhibit C and the facts contained therein are incorporated into this stipulation. Copies of the most recent collective bargaining agreements for each of these groups are attached as Exhibits D through J and the facts contained therein are incorporated into this stipulation.

10. In the matter of final and binding arbitration between the Racine Education Association and the Racine Unified School District, Case No. XLIX No. 25158 MED/ARB - 514, Arbitrator Zeidler found in 1980 that the highest degree of comparisons exist in relation between the District and the nine other largest districts in the State of Wisconsin: Appleton, Eau Claire, Green Bay, Janesville, Kenosha, Madison, Milwaukee, Sheboygan and Waukesha. The parties have consistently recognized these school districts as comparable school districts.

11. The Green Bay School District employs registered nurses and those employees are represented by the teachers' union. A copy of the 1995-97 collective bargaining agreement between the Board of Education of Green Bay Area Public School District and the Green Bay Education Association is attached as Exhibit K and the facts contained therein are incorporated into this stipulation.

12. The Madison School District employs registered nurses and those employees are represented by the teachers' union. A copy of the 1993-95 collective bargaining agreement between the Board of Education, Madison Metropolitan School District and Madison Teachers Incorporated is attached as Exhibit L and the facts contained therein are incorporated into this stipulation.

13. Milwaukee School District employs registered nurses and those employees are not represented by the teachers' union but by the Administrators and Supervisors Council. Copies of the December 6, 1996 letter to Keri Paulson from Milton Ellis, the current salary of schedules, and the 1993-95 collective bargaining agreement between the Milwaukee Board of School Directors and the Administrator and Supervisors Council are attached as Exhibit M and the facts contained therein are incorporated into this stipulation.

14. The Sheboygan School District employs one (1) registered nurse and that employee is a non-represented employee. A copy of the letter that has confirmed this fact is attached as Exhibit N and the facts therein are incorporated into this stipulation.

15. The Waukesha School District employs registered nurses and those employees are not represented by the teachers' union, however, the terms and conditions of their employment are as described in Non-Unit Management Personnel Employment Provisions attached as Exhibit O and the facts contained therein are incorporated into this stipulation.

16. The City of Racine employs registered nurses. A copy of a letter dated January 10, 1997, to Frank Johnson from James Kozina that describes the City of Racine's bargaining unit compositions is attached as Exhibit P and the facts contained therein are incorporated into this stipulation.

17. The County of Racine employs registered nurses. A copy of a letter dated January 10, 1997, to Keri Paulson from Kenneth Adams that describes the County of Racine's bargaining unit compositions is attached as Exhibit Q and the facts contained therein are incorporated into this stipulation.

18. All persons in unit #1 all report to supervisors who are considered educators because of their education and work experience. The health care coordinators report to the Supervisor of Nursing Services who is not an educator by education and/or experience.

19. All persons in unit #1 are required to receive an employment contract under Section 118.21 Wis. Stats. All persons in unit #2 are not required to receive an employment contract under Section 118.21 Wis. Stats. The health care coordinators are not under such requirement.

20. All persons in bargaining unit #1 are subject to the renewal/non-renewal process of Section 118.22(1), Wis. Stats. All persons in bargaining unit #2 are not subject to the renewal/non-renewal process of Section 118.22(1), Wis. Stats. The health care coordinators' employment does not require certification, license or classification status by the Department of Public Instruction, therefore, they are not subject to this law.

21. All members of bargaining unit #1 receive an annual salary based on a salary scale that advances employees based on educational credits from an accredited university and educational working experience. Health care coordinators are paid on the basis of \$18.25 per hour worked.

22. Pursuant to Sec. 118.235, Wis. Stats., all members of bargaining unit #1 are required to have a duty free lunch period each day of not less than 30 minutes in length and such must be provided near the time of the regular lunch period. There is no such requirement for bargaining unit #2 or the health care coordinators.

23. All members of bargaining unit #1 are paid for 187 required work days. Four (4) of the health care coordinators currently work for 185 paid days. The remaining health care coordinator who works in exceptional education currently works 210 days. Health care coordinators are present in the schools before and after school is in session, during record days, and institute day. They use this time for paper work, home visits, and in-service.

24. A copy of the hours of work for members in bargaining unit #1 is attached as Exhibit R and the facts contained therein are incorporated into this stipulation. A copy of the hours worked and the locations for the health care coordinators is attached as Exhibit S and the facts contained therein are incorporated into this stipulation. During the 1996-97 school year, four (4) health care coordinators were originally employed for 30 hours per week. Since the beginning of the school year, two (2) health care coordinators had their hours increased to 32 hours per week to allow coverage of other health impaired students at Gilmore Middle School and Case High School and one (1) health care coordinator has agreed to coordinate Wadewitz Clinic which added 15 hours per month to her schedule.

25. A copy of the job description for the teaching staff contained in bargaining unit #1 as found in Board Policy 4116.31 is attached as Exhibit T and the facts contained therein are incorporated into this stipulation. Copies of the job vacancy postings for persons employed in bargaining unit #2 are attached as Exhibits U through W and the facts contained therein are incorporated into this stipulation. A copy of the job description for the health care coordinators is attached as Exhibit X and the facts contained therein are incorporated into this stipulation.

26. All members of bargaining unit #1 are required to be evaluated on the basis of the evaluation documents attached as Exhibit Y and the facts contained therein are incorporated into this stipulation.

27. Educational assistants are not part of either REA unit #1 or REA unit #2. Educational assistants are not required to have any formal education beyond high school. Educational assistants are paid by the hour. Educational assistants work with students on a daily basis in all schools in classrooms. Educational assistants help the teachers with all aspects of teaching under the teacher's direction and supervision.

28. Basic facts about the nursing program are outlined and attached as Exhibit Z.

29. The issue to be resolved in this unit clarification hearing is: Should the health care coordinators be accreted into Racine Education Association unit #1, Racine Education Association #2, or neither.

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

CONCLUSIONS OF LAW

1. The Health Care Coordinators of the Racine Unified School District are school district professional employees within the meaning of Secs. 111.70(1)(L) and 111.70(1)(ne), Stats.

2. Health Care Coordinators share a sufficient community of interest with employees in Racine Education Association bargaining unit #1 to be appropriately included therein, particularly in light of the anti-fragmentation policy set forth in Sec. 111.70(4)(d)2.a., Stats.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

Health Care Coordinators of the Racine Unified School District are hereby included in bargaining unit #1 of the Racine Education Association.

Given under our hands and seal at the City of Madison, Wisconsin, this 5th day of
November 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

A. Henry Hempe /s/
Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

RACINE UNIFIED SCHOOL DISTRICT

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

The Association seeks to include Health Care Coordinators in bargaining unit #1. The District opposes inclusion, claiming that Health Care Coordinators belong in neither unit #1 nor unit #2. However, should the Commission conclude inclusion in some unit is appropriate, the District believes that inclusion in unit #2 is more appropriate than unit #1.

POSITIONS OF THE PARTIES

Association

The Racine Education Association asserts that Health Care Coordinators are professional employees, and that bargaining unit #1 is an appropriate unit for their placement. Health Care Coordinators share a sufficient community of interest with teachers, who comprise unit #1, as they share the ultimate goal of supporting the educational process.

District

The Racine Unified School District submits that Health Care Coordinators are not appropriately included in either unit #1 or #2, because the positions possess differing communities of interest; skills and duties; wages, hours, and working conditions; supervision; and work locations. However, unit #2 is the most appropriate of the two, as inclusion in that unit would avoid undue fragmentation, and because the positions comprising unit #2 share the most similarities with the Coordinators.

DISCUSSION

The Racine Unified School District has nine bargaining units. Bargaining units #1 and #2 include professional employees, and are distinguishable one from the other on the basis of Department of Public Instruction (DPI) licensure. Unit #1 contains employees who possess a DPI license, which is required by their position descriptions. Unit #2 is comprised of employees whose positions do not require a DPI license. This distinction and the resulting two units stems from the Commission's decision of August 11, 1994. The decision, in response to the District's petition for unit clarification, was in accordance with the language of Sec. 111.70(1)(ne), Stats., as it existed from 1993 to 1995 defining "school district professional employee" as holding a DPI license and having employment which required such licensing. 1/

Subsequent statutory amendment (1995 Act 27) deleted reference to the DPI licensing requirement which effectively returned the law to its pre-1993 state. 2/ Consequently, the definition of "professional employee" set forth in Sec. 111.70(1)(L), Stats., 3/ is again determinative. 4/

That the Health Care Coordinators are professionals under Sec. 111.70(1)(L), Stats., is not disputed and is consistent with prior Commission rulings. 5/ Consequently, we conclude Health Care Coordinators are professionals within Sec. 111.70(1)(ne), Stats., and Sec. 111.70(1)(L), Stats.

When resolving appropriate unit issues, we consistently consider the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.
5. The degree to which the employees in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. *ARROWHEAD UNITED TEACHERS V. WERC*, 116 WIS.2D 580 (1984).

As the Commission stated in *NORTHEAST TECHNICAL COLLEGE*, DEC. NO. 11602-A, (WERC, 11/95):

We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase "community of interest" as a means of determining whether employees share similar interests, usually -- though not necessarily -- limited to those interests reflected in Factors 2-5. This definitional duality is of long-standing, and has received the approval of the Wisconsin Supreme Court,

citing ARROWHEAD UNITED TEACHERS v. WERC, 116 Wis.2d 580, 592 (1984)

The fragmentation criterion reflects our statutory obligation to "avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal workforce." Section 111.70(4)(d)2.a., Stats.

The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. MARINETTE SCHOOL DISTRICT, DEC. NO. 2700 (WERC, 9/91).

Based upon long-standing Commission precedent, we believe it is well understood by the parties that within the unique factual context of each case, not all criteria deserve the same weight SHAWANO-GRESHAM SCHOOL DISTRICT, DEC. NO. 21265 (WERC, 12/83); GREEN COUNTY, DEC. NO. 21453 (WERC, 2/84); MARINETTE COUNTY, DEC. NO. 26675 (WERC, 11/90) and thus a single criterion or a combination of criteria listed above may be determinative. Common purpose, MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NOS. 20836-A AND 21200 (WERC, 11/83); similar interests, MARINETTE SCHOOL DISTRICT, SUPRA; fragmentation, COLUMBUS SCHOOL DISTRICT, DEC. NO. 17259 (WERC, 9/79); bargaining history, LODI JOINT SCHOOL DISTRICT, DEC. NO. 16667 (WERC, 11/78).

Community of Interest

In analyzing "community of interest" in terms of shared purpose, all of the professional employees work in support of the District's mission of educating. Health Care Coordinators are not exceptions, as they possess the goal of meeting students' immediate and long-term health needs through treatment and curriculum planning. In that regard, those individuals share a community of interest with unit #1 and unit #2.

Duties and Skills

The skills and duties of Health Care Coordinators are most similar to those of the members of unit #1 because of the interaction with students. Teachers are required to instruct students, supervise classroom resources, and maintain responsibility for the students. These activities require strong communication and interaction skills.

The duties and skills of unit #2's members are varied. The Wellness Coordinator is charged with administering the Student Assistance Program and establishing wellness initiatives for students and staff. Research Associates must have the statistical skills to gather data and conduct information analyses. Lastly, the Multicultural Coordinator is responsible for working with teachers to administer programs and assess long-term effectiveness.

In contrast, Coordinators are charged with providing health care for the District's students, via treatment, assessment, consultation with other actors in the system, and facilitating planning. They must possess a Bachelor's Degree in Nursing, a license to practice in Wisconsin, and CPR and emergency training. In addition, Health Care Coordinators must be skilled communicators that can give and follow written and verbal directives, and must possess the ability to work in a public educational setting. Because of the communication skills and interaction involved, the duties and skills of Health Care Coordinators align more closely with those of teachers in bargaining unit #1.

Wages, Hours, and Working Conditions

Members of bargaining unit #1 receive an annual salary based upon a pay scale that advances by a teacher's educational credits from an accredited university and his/her educational experience. Members of unit #2 are also compensated with an annual salary based upon a designated schedule. In contrast, Health Care Coordinators receive \$18.25 per hour worked.

Four of the Health Care Coordinators work 185 days per year, and the fifth works 210 days. Members of unit #1 are required to work 187 days, while those in unit #2 work the same number of days (although not necessarily the same days) as members of unit #1.

Due to the differing nature of the professions, working conditions vary. Teachers are entitled to a duty-free lunch period of not less than 30 minutes daily. Teachers are required to receive an employment contract under Sec. 118.21, Stats., and are subject to the renewal/non-renewal process of Sec. 118.22(1), Stats. Unit #2's working conditions address employee starting and ending times, meeting compensation, and mileage reimbursement. In addition, unit #2 members are not required to receive contracts and are not subject to the renewal/non-renewal process.

The Health Care Coordinators' wages, hours, and working conditions are somewhat distinct from those of employees in units #1 and #2.

Supervision

All members of unit #1 are supervised by individuals who are considered educators because of their education and work experience. The parties stipulation does not identify whether members of unit #2 are supervised by educators. In contrast, Health Care Coordinators report to the Supervisor of Nursing Services. Thus, the consideration of supervision does not support inclusion in unit #1.

Workplace

The consideration of workplace location establishes similarities between members of unit #1 and Health Care Coordinators. Essentially, all of the District's employees share a common workplace, because all of its employees work at one or more of its numerous sites. However, in a narrow sense, the teachers of unit #1 all work in the classrooms of school buildings, while the Researchers, Wellness Coordinator, and Multicultural Coordinator of unit #2 have offices at a central location. Health Care Coordinators work at various schools within the District, thus having workplaces most similar to those of employees in unit #1.

Fragmentation

The Commission, in accordance with Sec. 111.70(4)(d)2.a., Stats., has established a policy of avoiding fragmentation of bargaining units. 6/ Section 111.70(4)(d)2.a., Stats., allows the Commission to combine employees from differing professions into the same collective bargaining unit. 7/ Placing Health Care Coordinators into unit #1 or unit #2 satisfies this anti-fragmentation policy. Leaving the Coordinators outside the REA units and subject to representation as a five person unit is directly contrary to Sec. 111.70(4)(d)2.a., Stats.

Bargaining History

Because Health Care Coordinator positions are new and currently unrepresented, the bargaining history factor is inapplicable.

CONCLUSION

Anti-fragmentation makes exclusion of the Coordinators from unit #1 or unit #2 inappropriate. Analysis of Factors 1-5 above leads us to conclude that inclusion of the Coordinators in unit #1 is the most appropriate unit placement.

Given under our hands and seal at the City of Madison, Wisconsin, this 5th day of November 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

A. Henry Hempe /s/
Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

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ENDNOTES

1/ 1993 Act 16, Sec. 111.70(1)(ne), Stats., provided:

"School district professional employe" means a municipal employe who is employed by a school district, who holds a license issued by the state superintendent of public instruction under s. 115.28(7), and whose employment requires that license.

2/ Section 111.70(1)(ne), Stats., now reads:

"School district professional employe" means a municipal employe who is a professional employe and who is employed to perform services for a school district.

3/ Section 111.70(1)(L), Stats., states:

(1) DEFINITIONS. As used in this subchapter:

(A) Professional "employe" means:

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 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

1. 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 to become a professional employee as defined in subd. 1.

4/ KENOSHA EDUCATION ASSOCIATION, DEC. NO. 11293-D (WERC, 8/95).

5/ WISCONSIN INDIANHEAD VTAE DISTRICT, DEC. NO. 11380-B (WERC, 6/87); SCHOOL DISTRICT OF MAPLE, DEC. NO. 17463 (WERC, 11/79).

6/ JOINT CITY SCHOOL DISTRICT NO. 1, CITY OF SUPERIOR ET AL, DEC. NO. 13238-A (WERC, 6/76); SCHOOL DISTRICT OF MAPLE, DEC. NO. 17463 (WERC, 11/79).

7/ Section 111.70(4)(d)2.a., Stats., states:

The commission shall determine the appropriate collective bargaining unit for the purpose of collective bargaining, and shall, whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the municipal employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a collective bargaining unit.