

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
FOND DU LAC SCHOOL DISTRICT
Involving a Certain Employee of the
FOND DU LAC EDUCATION ASSOCIATION

Case 2
No. 57885
ME-987

Decision No. 7838-A

Appearances:

Davis & Kuelthau, S.C., by **Attorney Mary S. Gerbig**, 200 South Washington Avenue, P.O. Box 1534, Green Bay, Wisconsin 54305-1534 and **Attorney Mark F. Vetter**, 111 East Kilbourn Avenue, #1400, Milwaukee, Wisconsin 53202-6613, appearing on behalf of the Fond du Lac School District.

Attorney Laura Amundson, Associate Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708-8003, and **Mr. Armin Blaufuss**, Executive Director, WinnebagoLand UniServ Unit-South, P.O. Box 1195, Fond du Lac, Wisconsin 54936-1195, appearing on behalf of the Fond du Lac Education Association.

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

Fond du Lac School District filed a petition on July 9, 1999 with the Wisconsin Employment Relations Commission seeking to clarify an existing collective bargaining unit of District employees represented by the Fond du Lac Education Association. The District seeks to remove the position of Alcohol, Tobacco, and Other Drug Abuse (AODA) Program Coordinator because the position is held by a managerial employee. The Association opposes the removal arguing the Coordinator is not a managerial employee.

Hearing on the petition was held by Examiner Karen J. Mawhinney, a member of the Commission's staff, on December 2, 1999 in Fond du Lac, Wisconsin. The parties subsequently agreed that the record in a grievance arbitration case conducted by Arbitrator Daniel J. Nielsen should be part of the record in this proceeding. The record was closed January 26, 2001.

Dec. No. 7838-A

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Fond du Lac Education Association, hereinafter Association, is a labor organization with its offices located at c/o WinnebagoLand WEAC UniServ, Post Office Box 1195, Fond du Lac, Wisconsin, 54936-1195.

2. The Fond du Lac School District, hereinafter District, is a municipal employer with its offices located at 72 South Portland Street, Fond du Lac, Wisconsin, 54935-4253.

3. The Association is the exclusive collective bargaining representative of professional District employees in a bargaining unit described in the parties' 1994-1997 collective bargaining agreement as follows:

Article II

A. RECOGNITION

The Board of Education (referred to hereafter as "Board") of the Fond du Lac School District, recognizes the Fond du Lac Education Association (referred to hereafter as "F.E.A.") as the exclusive bargaining representative as defined in Wisconsin Statutes 111.70 and as determined by a legal election on January 19, 1967, for all professional personnel including full or part-time certified classroom teachers, librarians, guidance counselors, speech therapists, extended education program teachers, and special subject teachers, but excluding substitutes, supervisors, attendance officer, executives, full-time administrators, office clerical, custodial and other non-certified personnel.

4. The job description for the District's AODA Program Coordinator dated September 20, 1991 reads as follows:

The district-wide Alcohol and Other Drug (AOD) Program Coordinator will function within the Pupil Services Department and have direct responsibility to the Director of Pupil Services. The individual will coordinate all aspects of the district's AOD program functioning. Responsibilities include:

- Assist in the development, monitoring, and implementation of a K-12 developmental AODA prevention curriculum, Student Assistance Program (SAP) and other AOD programs for district students and staff.
- Implementation and monitoring of district-wide AOD policies and procedures.

- Provide direction and meet regularly with AOD Program Advisor Committee (building level AOD or SAP coordinators).
- Provide input to the budgetary process including the procurement of monies from grants.
- Maintain effective working relationships with local service providers and meet on a regular basis with community prevention, intervention, and treatment personnel to assist in community-wide programs (sic) development and evaluation.
- Monitor the function of support groups and identify training needs of district personnel.
- Act as a district resource person for AOD information and consultation.

5. AODA Program Coordinator Cismonski is issued a 190-day individual employment contract by the District and normally works from 7:45 a.m. to 5:00 p.m. Cismonski earned a masters degree in Public Health in 1990, and holds a Wisconsin Department of Public Instruction license to teach in Wisconsin.

Cismonski spends fifteen (15%) percent of his time in the classroom or in some other capacity teaching students. The remainder of his time is spent coordinating the AODA program. Cismonski prepares the District service delivery model for the AODA program. Cismonski represents the District at community, CESA regional, state and national meetings. Cismonski consults with and acts as a resource for District administrators and staff on AODA issues. Cismonski determines, organizes and assists in organizing the AODA programs in which the District will participate. Cismonski schedules meetings with the AODA Advisory Committee to discuss the needs of the District's alcohol, tobacco and drug programs. Cismonski annually conducts an evaluation of the AODA program and completes the year end reports.

Cismonski writes, administers and monitors state and federal grants. There are federal entitlement grants, state and federal competitive grants and mini-grants. Cismonski is informed by the District Superintendent of the initiation of the grant cycle and he attends the grant meeting/workshop that explains the nuances of each grant. He meets with and solicits proposals for the grants from building principals and staff, creates a budget for each proposal, evaluates each proposal to determine whether it meets the eligibility criteria for the grant, eliminates proposals that do not meet the eligibility criteria, and determines the content of the grants.

Cismonski is the Project/Program Coordinator for the AODA grants and ensures that the grant monies are expended in accordance with the purposes of the specific grants. Cismonski has the authority to make adjustments to proposals based on the amount of funding received for each grant and to reallocate monies within a grant. DPI consults with Cismonski when making budget modifications and changes.

Cismonski responds to requests for expenditures from the grant monies. If a staff member desires to attend a conference relating to AODA issues and obtains permission from their principal, he/she contacts Cismonski to acquire funding approval.

6. The AODA Program Coordinator for the Fond du Lac School District has sufficient participation in the formulation, determination and implementation of management policy and authority to commit the employer's resources to be a managerial employee.

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

CONCLUSION OF LAW

The AODA Program Coordinator for the Fond du Lac School District is a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The AODA Program Coordinator for the Fond du Lac School District is hereby excluded from the bargaining unit of professional employees represented by the Fond du Lac Education Association.

Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of August, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Fond du Lac School District

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

POSITIONS OF THE PARTIES

The Association

The Association asserts that the AODA position held by Cismonski is primarily a clerical position implementing the 20 Standards Initiative of the Department of Public Instruction. The Association contends that the District determines the AODA policies, curriculum, advocacy, programs and activities and Cismonski is simply responsible for their implementation. The Association alleges that Cismonski is acting within pre-ordained guidelines established by DPI or some other governmental agency and, as such, is not a managerial employee.

The Association concurs that Cismonski prepared the grants (competitive, entitlement and mini-grants) but maintains that this is simply accessing existing grants and performing a “paint-by-the-number” filling in the blanks exercise using information obtained from building administrators and staff. Further, since Cismonski’s grant preparation is overseen by the Director of Pupil Services, signed by the District Administrator and could be vetoed by any administrator of the District, he does not have sufficient independent authority to commit the financial resources of the District to be determined a managerial employee.

The District

The District asserts that Cismonski is responsible for the overall direction of the District’s AODA program. The District alleges that Cismonski is a managerial employee due to his high level of direction and control over AODA program policy and the high level of authority he has when allocating resources, determining services and arranging for services. The District notes that Cismonski’s supervisor testified that he relied “one hundred (100%) percent” on Cismonski’s recommendations based on his training and expertise in alcohol and other drug abuse issues.

The District relies on the Commission’s decision in CESA #11 DEC. NO. 22530-A (WERC, 12/98) wherein positions with substantially similar authority and duties were found to be managerial. The District asserts that the areas of authority and control that the Commission articulated as dispositive of managerial status in CESA #11 are found in the District’s AODA Coordinator position.

DISCUSSION

With respect to managerial employees, we said in MENOMONEE COUNTY, DEC. NO. 26983-B (WERC, 4/95):

Managerial employees are excluded from the definition of municipal employees pursuant to Sec. 111.70(1)(i), Stats. The Commission has developed

a definition of managerial status through case law in the absence of a statutory definition of a “managerial” employee. In determining whether a position is managerial, the Commission considers the degree to which the incumbent of the position actually participates in the formulation, determination and implementation of management policy or possess the authority to commit the employer’s resources. See, e.g., MILWAUKEE VTAE, DEC. No. 8736-B (WERC, 6/79); NORTHWOOD SCHOOL DISTRICT, DEC. No. 20022 (WERC, 10/82); MARINETTE COUNTY (PINEVIEW HEALTH CARE CENTER), DEC. No. 26154-B (WERC, 3/92), and cases cited therein. The necessary level of managerial responsibility must be “at a relatively high level.” As we stated in MARINETTE COUNTY (PINEVIEW HEALTH CARE CENTER), DEC. No. 26154-B (WERC, 3/92):

To confer managerial status, an individual’s authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the employer’s operations. Authority to significantly affect the nature and direction of the municipal employer’s operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided, including the use of outside contractors. (Footnotes omitted).

We conclude the AODA Coordinator is a managerial employee due to the significant role played in the formulation, determination and implementation of policy and the authority to commit District resources. Contrary to the Association, we find the AODA Coordinator is not a “paint by the numbers” clerical and instead has significant policy and resource authority.

Cismonski is responsible for coordinating the AODA program for the District. He develops the service delivery program with multiple components including supervision of treatment, early intervention, advocacy, policy, curriculum and programs. He has complete responsibility for the preparation, monitorization and evaluation of the AODA grants for the District. Cismonski is the Project/Program Coordinator for the grants and ensures that the grant monies are expended in accordance with the purposes of the specific grants. Cismonski has the authority to make adjustments to proposals based on the amount of funding received for each grant and to reallocate monies within a grant. Cismonski is the contact person that the Department of Public Instruction relies upon when making budget modifications and changes.

The District correctly cites our ruling in CESA #11, SUPRA, as being supportive of the result we reach here. We found therein that:

. . . Cook performs all the duties in her job description and helps draw up budgets for individual grants; hires outside consultants to administer some of those grants; and establishes their salaries pursuant to pre-approved joint guidelines. She does not, however, help draw up her department’s budget; she

does not make equipment purchases on the Agency's behalf; and she does not sign any contracts unrelated to the consultant contracts. We conclude that the former factors outweigh the latter and that Cook possesses sufficient indicia of managerial status to warrant her exclusion from the bargaining unit as a managerial employee because she is able to commit the Agency's financial resources by working on grants and by hiring outside consultants and because she thereby affects the nature and direction of the Agency's operations.

Our CESA #11 decision cites VERNON COUNTY, DEC. NO. 13805-B (WERC, 4/91) in which we found a Developmental Disabilities Coordinator was a managerial employee because he "writes and submits applications for grants, and has the authority to redirect and reallocate unspent funds" and because "he has the authority to transfer funds from one line to another, and to choose between alternative providers of goods and services." VERNON COUNTY is also supportive of the result we reach here.

The Association argues that our decision in NORTHLAND PINES SCHOOL DISTRICT, DEC. NO. 27154 (WERC 2/92) is analogous to the pending case. In NORTHLAND PINES, we found that the Student Assistance Program Coordinator was not managerial because her involvement in the formulation and determination of policy was "not a sufficiently high level to establish that Lyon is a managerial employee. . . ." and ". . . her role in program formulation and determination is shared by other members of the committee she chairs."

From our review of the record, we are satisfied that the District's Coordinator has greater policy and resource authority than did the Coordinator in NORTHLAND PINES and thus we find the facts of this case warrant reaching a different result than we did in NORTHLAND PINES.

In sum, the AODA Coordinator sufficiently participates in the formulation, determination, and implementation of management policy and commits the District's resources to be a managerial employee. Therefore, the AODA Coordinator is excluded from the bargaining unit described in Finding of Fact 3 above.

Dated at Madison, Wisconsin this 2nd day of August, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner