

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

BOARD OF EDUCATION, WHITEFISH BAY
PUBLIC SCHOOLS

and

WHITEFISH BAY EDUCATION ASSOCIATION

For Declaratory Ruling

Case IV

No. 15250 DR(M)-31

Decision No. 10799

DECLARATORY RULING

Board of Education, Whitefish Bay Public Schools and Whitefish Bay Education Association having jointly petitioned the Wisconsin Employment Relations Commission to issue a declaratory ruling as to whether the positions of guidance counselor and multi-media coordinator employed by the Municipal Employer should be included in a collective bargaining unit of certificated teaching personnel employed by the Municipal Employer; and the parties having submitted written statements of their respective positions on the issues raised and waived hearing in the matter; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That the Board of Education, Whitefish Bay Public Schools, hereinafter referred to as the Municipal Employer, is a Municipal Employer within the meaning of Section 111.70(1)(a), Wisconsin Statutes.

2. That the Whitefish Bay Education Association, hereinafter referred to as the Association, is a labor organization within the meaning of Section 111.70(1)(j), Wisconsin Statutes; and that the Association is the representative of certain employees of the Municipal Employer.

3. That the Municipal Employer has voluntarily recognized the Association as the exclusive collective bargaining representative of certain of its employees; that the Municipal Employer and the Association have engaged in negotiations in an effort to reach their first collective bargaining agreement; that the parties have included in their agreement a statement of the bargaining unit involved, as follows:

"The Board recognizes the Whitefish Bay Education Association as the exclusive bargaining representative on wages, hours and conditions of employment for all full-time certificated employees of the district

No. 10799

engaged in teaching, (including classroom teachers, librarians, and special education teachers--speech, reading, special learning disabilities, and hearing) and part-time certificated employees teaching under an individual teaching contract with the district but excluding the following:

1. All administrators and central office personnel.
2. Certificated non-instructional personnel such as psychologist and athletic director.
3. Substitute teachers.
4. Paraprofessionals, teacher aides or clerks, volunteer lay personnel.
5. Office, clerical, maintenance, and custodial employees.
6. Recreation personnel (full-time certificated employees of the district engaged in teaching are not included in this exclusion,);

and that a dispute has arisen between the parties as to whether five guidance counselors and one multi-media coordinator should be included within the bargaining unit.

5. That the elementary guidance counselor, who is required to be a certificated teacher, operates a program designed to assist all students to make maximum use of their abilities, and works with students on the recognition of their strengths and limitations, the development of their individual interests and capabilities, and their understanding of values and ethical standards; that the elementary guidance counselor works for a greater proportion of the calendar year than classroom teachers; that the elementary guidance counselor does not perform significant managerial functions on behalf of the Municipal Employer; that the position responsibilities of the elementary guidance counselor do not give that employee access to confidential information concerning other employees of the Municipal Employer or the development of bargaining policy by the Municipal Employer; and that the elementary guidance counselor has no express or implied authority to supervise other employees of the Municipal Employer.

6. That high school guidance counselors, who are required to be certificated teachers, employed by the Municipal Employer operate a program providing for diverse and comprehensive services to students, parents and the faculty, including formal and informal conferences with students, liaison between parents and the school, and provision of information to parents and faculty; that the high school guidance counselors report directly to the high school principal; that the high school guidance counselors work for a greater proportion of the calendar year than classroom teachers; that the guidance counselors perform no managerial functions on behalf of the Municipal Employer; that the position responsibilities of the high school guidance counselors do not give those employees access to confidential information regarding other employees or the development of labor relations policy of the Municipal Employer and that the high school guidance counselors have no express or implied authority to supervise other employees of the Municipal Employer.

7. That the multi-media coordinator, also known by the title Director of Instructional Media Center, administers and provides consultive, instructional, production, organizational, and distribution services involving the use of media to implement administrative, teaching and learning situations; that, as a consultant, the multi-media coordinator participates in construction and/or remodeling

planning programs to determine space needs to facilitate maximum use of all types of instructional media; that, as an administrator, the multi-media coordinator mobilizes, trains and deploys personnel needed to effectively operate media center, formulates and sees to execution of policy regarding services of media center, and estimates budget needs and maintains running check on budget expenditures throughout each fiscal year.

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

CONCLUSIONS OF LAW

1. That the elementary guidance counselor is a municipal employe within the meaning of Section 111.70(1)(b), Wisconsin Statutes.
2. That the high school guidance counselors are municipal employes within the meaning of Section 111.70(1)(b), Wisconsin Statutes.
3. That the multi-media coordinator is a supervisor within the meaning of Section 111.70(1)(o)(1), Wisconsin Statutes, and is a managerial employe of the Municipal Employer and is not a Municipal Employer within the meaning of Section 111.70(1)(b), Wisconsin Statutes.
4. That the inclusion of guidance counselors in a bargaining unit of teaching personnel is appropriate under Section 111.70(1)(e) and Section 111.70(4)(d)(2)a, Wisconsin Statutes; and that such inclusion will effectuate the policies of the Municipal Employment Relations Act to avoid fragmentation of bargaining units among municipal employes.

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

DECLARATORY RULING

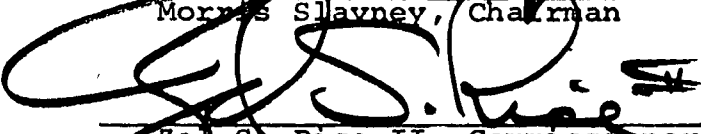
1. That elementary and high school guidance counselors employed by the Board of Education, Whitefish Bay Public Schools, are included in the same bargaining unit with certificated employes of the Municipal Employer engaged in teaching.
2. That the multi-media coordinator employed by the Board of Education, Whitefish Bay Public Schools is excluded from any bargaining unit of municipal employes.


Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

For Declaratory Ruling

No. 10799

which the parties propose to exclude from their recognized collective bargaining unit. The Commission has ruled in other cases that principals and other administrators are supervisors and are not eligible for inclusion in bargaining units of teachers; substitute teachers are generally excluded from bargaining units of regular teachers on the basis of the irregularity of their employment; and all of the employees listed under items 4, 5 and 6 of the parties' proposed unit description are non-professional employees who would be appropriately placed in other units. On their face, however, the titles "psychologist" and "athletic director" do not suggest automatic exclusion from the bargaining unit, and the Commission has reviewed the details of those position descriptions. We are satisfied that the psychologists employed by the Municipal Employer do not engage in the same activities as the employees in the proposed bargaining unit and that the functional and professional differences between psychologists and teachers would make it appropriate to place the psychologists in a professional unit separate from that of the teachers. The Athletic Director arranges schedules and arranges for and instructs employees required for the proper conduct of athletic contests, including officials, guards, ushers, audience supervision, maintenance, ticket sales and gate guards. The Athletic Director draws up the athletic budget and signs all requisitions for athletic equipment and supplies. These functions would indicate significant managerial authority and some supervisory authority. Further, the Athletic Director is consulted in the assignment of coaching responsibilities, and this function clearly involves elements of the definition of a supervisor. We are satisfied that, in this case, the exclusion of the psychologists and Athletic Director from the proposed bargaining unit would not be inconsistent with the purposes of the Municipal Employment Relations Act.

All five of the guidance counselors employed by the Municipal Employer work for a greater proportion of the calendar year than the classroom teachers who constitute the majority of the bargaining unit, and the main argument posed by the Municipal Employer is that the proportion of the year worked distinguishes these municipal employees from the teachers working a 190 day contract. The guidance counselors' salaries have been determined in the past by the Municipal Employer as a part of a total administrative and special personnel classification of employees, and have not been negotiated by the parties as a part of their collective bargaining. The Commission is not persuaded that the past pay practices or the mere fact that the guidance counselors work for a greater proportion of the year warrant the exclusion of the guidance counselors from a bargaining unit of employees engaged in the teaching profession. The guidance counselors are required to hold a valid teaching certificate, and they work in the same educational program as the classroom teachers in the proposed bargaining unit. The Commission has previously indicated its intention to include, in a unit consisting primarily of classroom teachers, those who do not engage in classroom teaching but who possess teaching certificates evidencing a background in education and who work with students or teachers in a non-supervisory capacity in support of the educational program. Janesville Board of Education (6678) 3/64; Appleton Joint School District No. 10 (7151) 5/65. Nothing in the Municipal Employment Relations Act amendments enacted subsequent to those decisions is to the contrary, and the Commission interprets the recent amendments to contain a strong mandate to continue the policies expressed in the Janesville and Appleton decisions.

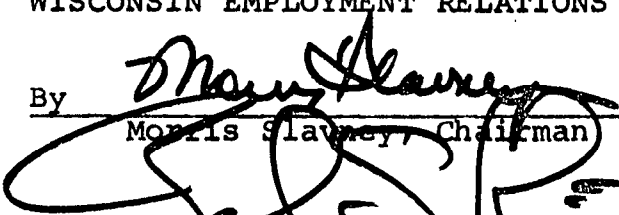
The Municipal Employer asks that the employees in dispute be given a right to an election to determine whether they wish to be represented by the Association. The granting of such a request would be inconsistent with the bargaining unit determined herein to be appropriate, since it would imply that the guidance counselors could have the option of determining the appropriate bargaining unit.

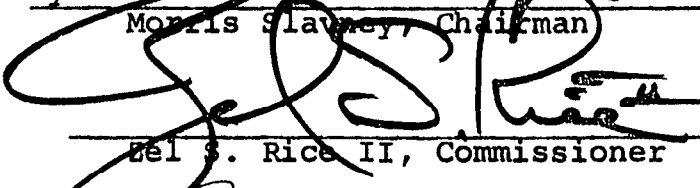
The Association argues that the personnel in the positions in dispute in this case are not supervisors, as defined by the Commission, and the Municipal Employer states in its arguments that they do not serve in a supervisory capacity, as defined by the Commission. Both of these statements are conclusionary and are not regarded by the Commission as binding upon it. A review of the position descriptions of the guidance counselors does reveal no supervisory capacity, but the position description of the multi-media coordinator contains some significant indicia of supervision. The definition of municipal employee also excludes confidential, managerial and executive employees, and the position description of the multi-media coordinator indicates participation and authority in significant management decisions, including planning of facilities, establishing of policy and establishment of budget. On the record submitted, the Commission has found that the multi-media coordinator is a supervisor within the meaning of the Municipal Employment Relations Act, and is therefore ineligible for inclusion in any bargaining unit of municipal employees.

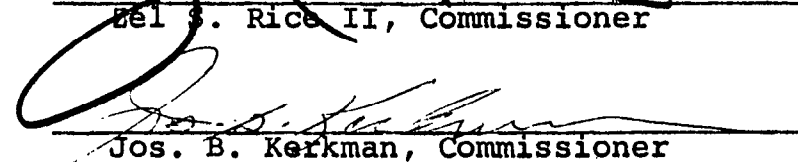
Dated at Madison, Wisconsin, this 17th day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Mel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner