

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WAUKESHA DISTRICT 8 AREA BOARD OF
VOCATIONAL, TECHNICAL AND ADULT
EDUCATION

Case III
No. 14667 ME-661
Decision No. 11076

Lawton & Cates, Attorneys at Law, by Messrs. Bruce Davey and John Carlson, appearing on behalf of the Petitioner.
Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law, by Mr. James Urdan, appearing on behalf of the Employer.

Waukesha County Technical Educators Association, having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70 of the Wisconsin Statutes, among certain employees of Waukesha District 8 Area Board of Vocational, Technical and Adult Education; and hearing on such petition having been conducted on June 9, 10 and 30, 1971, at Waukesha, Wisconsin, by John T. Coughlin, Hearing Officer; and the Commission having considered the evidence and briefs of Counsel, and being satisfied that a question has arisen concerning representation for certain employees of Waukesha District 8 Area Board of Vocational, Technical and Adult Education;

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all regular full time and all regular part time certificated teaching personnel employed by Waukesha District 8 Area Board of Vocational, Technical and Adult Education, including Department Chairmen and Guidance Counselors, but excluding all other teaching personnel, Librarian, Media Specialist, Curriculum Specialist, Coordinators, Registrar, Financial Aids, Placement and Veterans Officer, Aide to Adult Basic Education Coordinator, Athletic Director, supervisors, confidential and managerial employees, for the purpose of determining whether a majority of such employees desire to be represented by Waukesha County Technical Educators Association for the purposes of collective bargaining with the Waukesha District 8 Area Board of Vocational, Technical and Adult Education, on

questions of wages, hours and conditions of employment. 1/

Given under our hands and seal at the
City of Madison, Wisconsin, this 21st
day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slattery, Chairman


S. Rice II, Commissioner

I dissent with respect to
the inclusion of the Depart-
ment Chairmen in the unit.


Jos. B. Kerkman, Commissioner

1/ Since the school year is terminated, the Commission has not set forth the eligibility date in the Direction. On June 13, 1972, the Commission, in writing, advised the parties to indicate their desire as to when the Commission should conduct the election. The Commission suggested two possible choices as follows:

"1. The election could be conducted during the summer months by a mail ballot assuming that everyone agrees and assuming there is agreement on the eligibility date.

2. The election could be conducted after the start of the school year with an eligibility date established after the start of the school year. Perhaps those teachers employed during the first payroll period or on any date mutually agreed upon by the parties."

Upon response of the parties the Commission will issue a supplemental Direction setting forth the eligibility date therein.

WAUKESHA DISTRICT 8 AREA BOARD
OF VOCATIONAL, TECHNICAL AND ADULT
EDUCATION

Case III Decision No. 11076

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION

Background With Respect to Procedural Issues

The Association initiated the instant proceeding on May 19, 1971 by filing a petition requesting the Commission to conduct a representation election among the employees of the District in the following alleged appropriate collective bargaining unit:

"All regular full-time and regular part-time certificated teaching personnel employed by District 8 Area Board of Vocational, Technical and Adult Education, including guidance counselors, financial aids, placement and veterans counsellor, librarian, coordinators, media specialist, curriculum specialist, school nurse and athletic director and excluding all other employees, principals, supervisors and administrators." 1/

The District, in 1967, voluntarily recognized the Association as the exclusive collective bargaining representative for "all persons functioning as instructional staff, and working on a 9 1/2 month contract and paid on the teachers' salary scale." Following such recognition the parties have entered into successive collective bargaining agreements, and at the time of filing of the petition involved herein there existed a collective bargaining agreement covering the wages, hours and working conditions of the employees in the agreed upon unit effective from January 1, 1971 through December 31, 1971. Said agreement contained the following provision with respect to negotiations on a succeeding agreement:

"The parties shall exchange agendas by May 1, 1971. Negotiations shall take place during the period from June 1 through August 31 of each year."

In the fall of 1970 the Association requested the District to recognize the Association as the bargaining representative of the Guidance Counselors in its employ and that the Guidance Counselors be included in the voluntarily established bargaining unit. While the District agreed to such recognition, it refused to include the Guidance Counselors in the existing unit. In April 1971 the parties jointly filed a petition with the Commission seeking a declaratory ruling to resolve the following issue:

"A difference of opinion has arisen concerning the exclusion of the Financial Aids and Placement

1/ During the course of the hearing the Association amended its petition to include in the desired unit the positions of Registrar and the Aide to the Adult Basic Education Coordinator, and to exclude from the desired unit the position of School Nurse.

Officer from the Waukesha County Technical Educators Association, bargaining unit for teachers and Guidance Counselors."

The hearing on said declaratory ruling matter was held on May 5, 1971, and at the outset thereof it became evident that confusion existed between the parties as to whether the Guidance Counselors were to be included with the teacher unit, or whether the Guidance Counselors constituted a unit separate and apart from the teachers. Thereupon the petition for declaratory ruling was withdrawn, and on May 19, 1971, the petition involved herein was filed by the Association.

The District contends that the existing 1971 collective bargaining agreement constitutes a bar to the election requested by the Association, and that the petition should be dismissed as being not timely filed.

The Association, on the other hand, contends that the petition was timely filed, and in that regard argues

- (1) That the petition was timely filed within the timeliness rule established by the Commission in City of Milwaukee 2/ (which set forth that a petition shall be deemed timely filed, where there exists a collective bargaining agreement, if filed within a 60 day period prior to the date set forth in the agreement for the commencement of negotiation on a succeeding agreement or, if the latter date is more than six months prior to the budgetary deadline date, then within a 60 day period prior to such six month period.) In this regard the Association contends that since the agreement set forth that negotiations were to commence on June 1, 1971 its petition was timely filed,
- (2) Further, the instant petition was filed as a result of a misunderstanding with respect to the petition for the declaratory ruling which had been filed by the parties on April 8, 1971 and subsequently withdrawn, and
- (3) That the instant petition "does not disrupt the bargaining relationship" since the District recognizes the Association as the bargaining representative for the instructional staff, as well as for the Guidance Counselors.

The Commission deems that the petition was timely filed and in said regard accepts the Association's arguments noted in (1) and (2) above as the basis therefore.

Substantive Issues

The Commission must determine three substantive issues herein, namely (1) whether only regular full time certificated teaching personnel having a 9 1/2 month teaching contract should be included in the appropriate unit, (2) whether certain positions are super-

2/ Decision No. 8622, 7/68.

visory, and/or managerial employes, and therefore should be excluded from the claimed unit of teachers, and (3) whether certain positions are engaged in a craft or profession other than teaching.

The Organization of the Employer

The District's chief executive officer is the District Director. The organization of the District is bifurcated into two major functional areas below the District Director, the first area being designated as Instructional Services, which is headed by an Assistant Director. Below the Assistant Director in the chain of functional organization are five Division Chairmen. Below the Division Chairmen are twelve Department Chairmen and the instructional staff.

A major subfunction within Instructional Services function is the Educational Resource Center, formerly called the Instructional Resource Center. The Librarian, Media Specialist, Curriculum Specialist, Coordinators, and Aide to the Adult Basic Education Coordinator are employed in the Educational Resource Center.

The other major functional area under the District Director is entitled Student Services. Its chief administrator is the Assistant Director of Student Services. The Guidance Counselors, the Financial Aids, Placement and Veterans Officer, the Registrar and the Athletic Director are employed in Student Services.

Issue As to Regular Part Time Teachers

The issue with respect to whether regular part time teachers should be included in the unit is limited to only those regular part time teachers who teach day time classes. During the hearing the parties stipulated that evening school employes were to be excluded from the unit. The District employs from 30 to 40 part time teachers in its day school program. Of this number, approximately 20, who are not certificated teachers, are employed in the Home Economics Department, and they usually teach a single course. The balance of the part time day teachers are hired through the same process as regular full time day program teachers; are certificated; teach in the same manner as a full time teacher; are evaluated the same as a full time teacher; and have offices in the same area as the full time teachers in their department. Further, these part time teachers are informed when hired that, if they are successful and there is a need for a full time teacher, there is a possibility that they will be hired full time. Several part time teachers have in past been raised to the full time level.

Only full time teaching employes received a 9 1/2 month contract and are paid on the teachers' salary scale. There is a separate salary schedule for part time faculty. Part time teachers have none of the additional duties required of full time teachers, and there is a considerable yearly turnover in the complement of part time teachers. Part time teachers are employed on an ad hoc basis as courses are developed that require a teacher.

In comparison to the full time teacher work load of twelve to twenty nine student-contact hours, a majority of the part time teachers average approximately three to four contact hours on a semester basis. The part time teaching staff are hired exclusively for competence in a particular subject. They are not required to participate in curriculum development outside the activities as do full time faculty members. In addition to having a completely separate salary

schedule, the part time faculty do not receive the same benefits as received by the full time faculty members on 9 1/2 month contracts.

The Association contends that the day part time certificated teachers are regularly employed and perform functions similar to those performed by full time teachers, and that therefore such part time teachers should be included in the unit. On the other hand, the District argues that the part time teachers have a community of interest separate and apart from the full time certificated teaching personnel, and that therefore part time certificated teachers, regardless of the regularity of their employment, should be excluded from the unit consisting of full time teaching personnel.

The Commission has regularly included regular part time employees in the same unit with regular full time employees, 3/ where there is a sufficient community of interest among the part time and full time employees and where the duties performed by the part time employees are identical to and performed under conditions compatible and similar to those duties performed by the full time employees. The Commission is satisfied that our normal policy should apply in the instant case. We find a sufficient community of interest between regular part time certified personnel and regular full time certified personnel employed by the District in its day school to warrant inclusion of the regular part time certificated teachers in the unit. The record is clear that there is progression from part time status to full time status for certified personnel.

We would distinguish the facts in this case from the policy set forth previously regarding vocational schools where the Commission has held that regular part time personnel teaching less than 50% of a full teaching load are excluded from units of full time teachers in cases involving vocational schools. 4/ In Milwaukee Board of Vocational and Adult Education one of the principal factors involved in applying the 50% test by the Commission was the fact that teachers employed full time, or more than 50% of full time, were conferred with statutory tenure after three years of employment, while those certificated teachers who taught less than 50% of a normal teaching load were not eligible for such statutory tenure. There is no statutory provision affecting the teachers in the employ of the District involved herein. 5/

We further distinguish the instant case from the Milwaukee Board of Vocational and Adult Education for the reason that in that matter teachers teaching less than 50% of the time were normally not certified or were teaching in evening classes. Herein the parties have stipulated that evening division teachers should be excluded from the unit. Therefore, we have concluded that regular full time and regular part time certified teaching personnel are included in the unit regardless of the number of classes taught by the certificated part time personnel.

3/ Janesville Board of Education (6678) 3/64.

4/ Milwaukee Board of Vocational & Adult Education (6343) 12/63; Superior Vocational School (7479) 2/66.

5/ Teacher tenure for vocational and adult education schools are applicable to those schools in cities of the first class [38.15(19)].

Department Chairmen

The District has twelve Department Chairmen, whom the District would exclude from the bargaining unit, claiming that they possess supervisory and managerial authority. The Association, on the other hand, argues that Department Chairmen do not have the requisite authority to constitute themselves supervisors under Section 111.70 of the Wisconsin Statutes. It contends that the District produced no evidence to establish that the Department Chairmen have the authority to transfer, suspend, lay off, recall or promote teachers within their departments or to adjust their grievances, or to effectively recommend such action.

Section 111.70 of the Wisconsin Statutes, as amended, defines the term "supervisor" as follows:

"As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Section 111.70(1)(b) specifically states that managerial employees are not municipal employees. The Commission in City of Wausau (6276) 3/63, indicated that it would exclude managerial and supervisory personnel from collective bargaining units because they are agents of the municipal employer in the performance of the employer functions. Later, the Commission in Association of Municipal Attorneys of Milwaukee, (8100) 7/67, described "managerial employees" in terms of individuals who participate in the "employer-employee relationship".

As noted previously, the Instructional Services function is headed by an Assistant Director. The Assistant Director has five Divisional Chairmen directly under him. The five Divisional Chairmen have twelve Department Chairmen under them. A division must have at least three departments within it. Each department in turn must have a minimum of three full time teachers within it to be classified as a department, with a Department Chairman. The entire day school teaching staff is comprised of approximately 100 teachers, of which 60 are full time and 40 are part time. The Department Chairman's job description sets forth that, "The Department head is responsible to the Division Chairman for the organization, coordination and supervision of departmental education provided by the District." The average teaching load for Department Chairmen is 9.2 student contact hours per week, while the average direct teaching load for full time teachers is 18.1 student contacts.

The Department Chairmen have been included in the bargaining unit under the four collective bargaining agreements previously entered into by the parties, including the 1971 agreement. The Department Chairmen are on the same pay schedule as the rest of the instructional staff, they work the same number of hours, and their fringe benefits are identical to those received by the instructional staff. The Department Chairmen are not paid additional money for their duties as Department Chairmen.

Testimony revealed that the District's Board has the ultimate authority to hire and fire faculty. The Board delegates the authority to make recommendations concerning the selection of personnel to the District Director who, while retaining that penultimate authority, delegates the right to make personnel recommendations to the Division Chairman, who in turn, delegates it to the various Department Chairmen.

Presently, the District does not report any of its twelve department heads as supervisors in its annual report to the State, but instead lists them as teaching faculty, and they are so listed in the 1971 collective bargaining agreement. In addition, the Department Chairmen are not included in the District's administrative handbook, which sets forth the general policies, procedures, benefits and job descriptions for administrative personnel within the District.

Testimony by the Assistant Director of Instructional Services revealed that when a teacher vacancy arises his office sends out an announcement to that effect to various colleges and universities. The Assistant Director reviews the applications and then disseminates them to the Division Chairman, who in turn sends them to the appropriate Department Chairman. The applicant is then interviewed by the Division Chairman and the Department Chairman. Subsequently, the applicant meets the Assistant Director, who reviews the applicant's background and makes certain salary recommendations. The Assistant Director then makes his recommendations to the District Director, who reviews the applicant and makes the final salary offer. Although the Assistant Director transmits all the applications to the Division Chairman, the Division Chairman screens out some of the applications prior to their being sent to the Department Chairman. While the Department Chairmen render opinions concerning the technical competency of an applicant, we conclude that Department Chairmen do not make effective recommendations as to the hiring of instructional staff and that the responsibility to make such recommendations resides primarily in the Assistant Director of Instructional Services, and secondarily in Division Chairmen.

Although Assistant Director Anderson testified that Department Chairmen are involved in the disciplining of faculty members, numerous memoranda emanating from Anderson directly relating to the disciplining of faculty personnel were submitted by the Association and received into evidence. Contrariwise, no evidence was presented by the District to establish Anderson's claim. It is clear from the record and especially the aforementioned evidentiary memoranda that the actual disciplining of instructional staff personnel is performed by Assistant Director Anderson and that Department Chairmen neither discipline teaching personnel or effectively recommend such action.

Testimony revealed that the Department Chairmen request the teachers in their departments to indicate which courses they prefer to teach. Department Chairmen do not have the authority to order or instruct a teacher that he must teach a certain course. Any dispute as to which teacher shall cover a given class is resolved by the Division Chairman. In addition, it is solely the Assistant Director of Instructional Services, not Department Chairmen, who approve sick leave and leaves of absence.

Department Chairmen participate in the evaluation of teachers in their departments per a standard procedure, which includes a

compilation of evaluations made by students. In addition, fellow teachers in the department also participate in such evaluations. The record indicates that only in one instance did a Department Chairman recommend that a teacher not be renewed.

Based upon the above, we conclude that Department Chairmen merely act as sources of information and opinion as to the hiring of instructional staff and do not make effective recommendations concerning hiring, nor do they have effective authority relating to the disciplining or assigning of classes to said staff. The aforementioned functions are primarily performed by the Assistant Director of Instructional Services and secondarily by the Division Chairman. As to the Department Chairmen's involvement in the termination process, it is not clear from the testimony of the Accounting Department Chairman whether his recommendation, that a teacher in his department be terminated, was the primary cause of said termination or one of the factors involved. Furthermore, the ability to effectively recommend termination is but one of the indicia which must be present in determining supervisory status. Finally, it should be noted that Department Chairmen are paid on the teachers' schedule, that no additional compensation is granted them because of their non-teaching duties, that their fringe benefits are identical to those of teachers, and that the average Department Chairman spends 50% of his time performing bargaining unit work, namely, teaching. Consequently, on balance, we differ with our dissenting colleague and conclude that Department Chairmen do not exercise sufficient independent authority over instructional staff personnel to permit their exclusion from the bargaining unit as supervisors.

Although Department Chairmen do, at least peripherially, participate in the employer-employee relationship, it is clear that such participation is minimal. Furthermore, the interests of Department Chairmen are more aligned with bargaining unit employees for, as stated above, their wages, hours and conditions of employment are much more similar to teachers than they are to individuals who formulate policy decisions. The fact that the 1971 collective bargaining agreement provides for an informal oral dispute settlement procedure involving Department Chairmen is not sufficient in itself to render said Chairmen "managerial", in light of the aforementioned extensive community of interests existing between Department Chairmen and teachers. It should be noted that the formal written grievance procedure contained in the collective bargaining agreement does not involve Department Chairmen. We are satisfied that the Department Chairmen do not perform such duties or functions which are sufficient to warrant their exclusion from the unit as managerial employees.

Librarian, Media Specialist and Curriculum Specialist

The District contends that the Librarian, Media Specialist, and the Curriculum Specialist, all of whom perform their function in the Educational Resource Center, should be excluded from the unit on the basis that they are supervisory and managerial employees, as well as being engaged in a craft (profession) other than teaching. The Association, on the other hand, argues that the positions involved should be included in the unit on the basis that they are "certificated" and that said certification requirements exceed the certification requirements for teachers, however that such additional requirements are not of such nature as to exclude the positions from the teacher unit. Further, the Association, contends that any supervisory duties performed by the classifications in

question are not sufficient to warrant their exclusion from the unit.

The Librarian is employed on a 9 and 1/2 month contract, as are the teachers, upon his own request that he not be placed on a 12 month schedule in order that he might complete his masters degree program. Testimony revealed that the District had initially requested that said Librarian be employed on a 12 month contract. One regular part time aide is assigned to the Librarian, as are a number of fluctuating work-study aides, numbering up to eight. The Librarian makes effective recommendations for or against the hiring and termination, of the aides. In addition, he directly oversees and evaluates their performance. The Librarian is assigned a specific purchase order number, differing from that assigned to the remainder of the District's personnel, and he purchases library materials directly from the supplier. He is responsible for the acquisition of all the material housed in the library and for inventory maintenance. The Librarian is participating in the planning of a new library facility, in that he is involved in the actual lay-out of a new library area and makes recommendations for the furniture and equipment to be placed therein. In addition, he is involved in the evaluation of bids concerning the new library. He is also on a committee appointed by the District's Board, comprised of administrators, architect and board members, which will make the final recommendation as to the equipment to be purchased for the new facility. The Librarian does no teaching, and he is directly responsible to the Assistant Director of Instructional Services.

The Media Specialist advises the Assistant Director of Instructional Services and furnishes media services to the Instructional staff. He has the responsibility to review the budgets submitted by each department and division, pick out, review and revise requests for media equipment and materials, and consolidate into his budget those requests he decides are necessary for him to operate his program. The Media Specialist has direct responsibility to determine which equipment is required, to establish specifications for such equipment, and, where bidding is required, to furnish the Business Office with the material required to allow bids to be let. At the time of the hearing, the Media Specialist was assigned to one part time clerk, who types material for general filing and materials concerning office procedures. However, the District has included in its budget for the next fiscal year the addition of a technician in the audio-visual production area and one printing technician. The Media Specialist will make recommendations concerning the hiring of said two new employees. The District witness testified that the Media Specialist can make recommendations concerning the termination of personnel under his direction but there was no evidence adduced that he had ever made such a recommendation. The Media Specialist has no supervisor directly over him, other than the Assistant Director of Instructional Services.

The Media Specialist teaches no more than two hours per week every other semester. Fifty percent of his time is spent at providing in-service education and advice to the regular teaching faculty. A Media Specialist is required to have education over and above that required by teachers, which education includes courses in academic instruction, supervision, and public relations, plus a master's degree or equivalent. The state requires that prior to final certification as a Media Specialist an individual must spend three years in that position. The Media Specialist is on a 12 month con-

tract basis and his position is listed in the administrative handbook. He has been placed on a different and higher salary schedule than teachers and his fringe benefits differ from those received by teachers in that he receives additional holidays.

As with the Librarian and the Media Specialist, the Curriculum Specialist is a staff member of the Educational Resource Center. The person presently holding this position was hired and is provisionally certified as a Curriculum Specialist. He has a bachelor's degree in marketing, a master's degree in education, and has the equivalent of at least four academic majors within those two degrees. His functions are to advise the Assistant Director of Instructional Services and furnish curriculum services to the Instructional Divisions of the District. In conjunction with the Librarian and the Media Specialist, the Curriculum Specialist is responsible directly to the Assistant Director for the improvement, efficiency and effectiveness of the instructional processes.

The Curriculum Specialist fulfills this responsibility in two general ways. First, in acting as a "change agent", it is his direct responsibility to provide information, assistance and direction to the faculty, through the Division and Department Chairmen, which will assist the regular teaching staff to become more efficient and effective. A significant part of this function is concerned with changing attitude of the instructional staff as to the role of the teacher in order to allow for a more efficient and effective instructional program. It is the Curriculum Specialist's responsibility to provide information and procedures to teachers to enable and assist them in making this attitudinal change toward the role of a teacher. The second general function the Curriculum Specialist performs involves evaluation of instructional material and the coordination and implementation of District procedures to insure the continuity and consistency of the various courses and programs. In this phase of the job the Curriculum Specialist has part time clerical personnel who work directly for him, and he is responsible for the evaluation and supervision of these employees. At present there is only one part time clerical employee working for the Curriculum Specialist, but the new facility planned to open in late December, 1971 has a specifically and separately designed curriculum library which will have all professional materials and which will be staffed by a minimum of one full time clerk-technician. The Curriculum Specialist is involved in the hiring of the employees under his supervision, will presumably make the recommendation as to the final candidate for the new position to be filled, and will be directly responsible for the supervision and evaluation of this employee.

The position of Curriculum Specialist involves little, if any, teaching or other direct contact with students. As with the Media Specialist, about fifty percent of the Curriculum Specialist's job responsibility concerns training the teaching staff to develop and implement more effective and efficient teaching procedures. The Curriculum Specialist coordinates all curriculum projects; he works with the Division Chairmen in doing administrative research and development and with specific teachers in the development of new programs. Like the Media Specialist, the Curriculum Specialist is on a 12 month contract basis, and his salary range and certification classifications are the same as the Media Specialist's, and in excess of the regular teaching staff's. His additional education and

experience must be in the curriculum area. He is involved in the purchasing of curriculum materials and equipment, and develops a separate budget for his area. He must determine what equipment and materials are necessary for him to fulfill his responsibilities to assist and direct the teachers in becoming more efficient and effective, and his recommendations are substantially followed. The Curriculum Specialist, as with the Librarian and Media Specialist, is under the direct supervision of the Assistant Director of Instructional Services, and is subject to no intermediate supervisory authority.

The Commission is satisfied that the positions of Librarian, Media Specialist, and Curriculum Specialist should be excluded from the unit, since their responsibilities and functions are more closely aligned to the management of the functions of the District, including those matters involving educational policies, rather than to teaching functions.

Coordinators

There are a number of Coordinators whose responsibility includes meeting with the appropriate business and industrial members of the area contiguous to the District and to determine what types of educational offerings the District should provide. In addition, Coordinators are solely responsible for the recruitment, hiring, supervising and evaluating of the teaching personnel within their special program areas. The aforementioned functional areas are the only areas in the District in which the Director and the Assistant Director have extremely limited input. The Division Chairman acts primarily as an advisor even though he is schematically speaking the supervisor over the Coordinators.

The programs offered by the Coordinators are exclusively outside those regularly offered by the District during the day. The Coordinators are solely responsible for the promotion of their programs through a variety of media such as newspaper articles, advertising and direct mailing. After the program has been promoted, the Coordinator is solely responsible for the arrangement of suitable facilities and services necessary to run the program, such as providing for food and beverages. In addition, the Coordinators are the primary source for the preparation of the budget funding the programs which they initiate. The budget includes all instructional, janitorial and rental expenses flowing from the programs provided by the Coordinators. Finally, the Coordinators are not required to obtain specific District approval to establish their various programs during the year. Coordinators are certificated and they are employed on a 12 month basis. They have a different and higher salary than teachers and they receive additional holidays.

With respect to Coordinators the Employer contends as follows:

"Coordinators are indisputably managerial employees because they separately administer a major budget and arrange independent programs on behalf of the Employer. They are also supervisors, because they hire and supervise all of the personnel within the special programs they are responsible for. Furthermore, their qualifications and duties differ significantly from those of the teachers, so that the Coordinators constitute a separate craft and cannot be included in the claimed unit of teaching personnel. Based on their supervisory authority alone, the

Coordinators should be excluded from the unit. Their managerial and separate craft status makes exclusion conclusive."

The Association argues that the Coordinators should be included in the unit since the duties performed by them "would not create a conflict of interest situation".

Since Coordinators have the authority to recruit, hire and fire instructors in their programs and assign and direct the work of said instructors, we conclude that Coordinators be excluded from the bargaining unit in that they function as supervisors. Additionally, they are excluded because they exercise considerable administrative authority. 6/

The Registrar

The Registrar is responsible to the District for all records pertaining to students and for the registration of all students who enroll in any courses offered by the District. He records and prepares the District's annual report which reflects the number of students who attend the District. The aforementioned report has a direct effect on the District monetarily, in that the District is granted approximately \$350 per full time student by state and federal government. It is the Registrar's responsibility to insure that this report is accurate for any miscalculation could well result in a direct dollar loss to the District.

The Registrar, as an official of the District, accepts credits on a transfer basis. He prepares a monthly statement of nonresident tuition whereby he directly awards students nonresident tuition, amounting to several thousands of dollars per month in order that said students can attend courses in other districts. He identifies individuals required to assist him in the registration process, and he will designate the type of work they will perform. He has in the past refused to accept some secretaries, who were initially assigned to work with him in the registration process. At various times during the registration process he may be assisted by 15 or 20 individuals.

The Registrar prepares a budget relating to the money needed to operate the registration program. He has one full time records clerk and three part time clerks working under his direction. There is teaching responsibility required of the position, which does not require teacher certification although he does some teaching in the evening school. He spends less than 10% of his time in student contacts. The Registrar is on a 12 month contract, is paid on a different and higher salary schedule than are teachers, and he receives additional holidays than received by teachers.

The District's minimum requirement for the position of Registrar required a master's degree in the field, five years of

6/ See Area Vocational, Technical and Adult Education, District No. 1, Eau Claire, Wisconsin (8869-A) 6/69, where the Commission rendered an identical decision in a case involving Coordinators.

teaching experience, two years of bona-fide non-teaching occupational experience, and education courses. The Association contends that said requirements "make it clear that the Registrar is a member of the same profession as the counselors and teachers". On the other hand, the District argues that the Registrar is both supervisory and managerial, and should be excluded from the unit of teachers. The Commission is satisfied that the Registrar's community of interest lies with the management of the District's function, rather than with the teachers, and therefore is excluded from the unit.

Financial Aids, Placement and Veterans Officer,
and Aide to the Adult Basic Education Coordinator

Currently there are separate job descriptions involving the functions of Placement Officer and Financial Aids Officer, but both of these functions are performed by one individual. The financial aid includes veterans services and the securing and disbursement of scholarships, loans and grants. The individual presently occupying the positions involved spend a majority of his time in the financial aids function during the summer and early fall, and in the spring semester a majority of his time is spent in the employment placement, as students begin to actively explore employment possibilities. Specifically, as the financial aids officer the individual in question represents the school at all State meetings relative to financial aids. He is responsible to request monies, based upon interpretation of student needs, from both federal and state governments. Furthermore, he is responsible for the work study program, whereby he places students in jobs within the school, or assigns students to the Business Manager, who in turn will place said students in a job. In addition, he seeks financial aid from local business and industry. During the past year he has distributed in excess of \$290,000 in all forms of financial aid.

In his function as Placement Officer, he represents the District in its contacts with local industries in an effort to find student employment. This necessitates visiting local businesses and industries and informing them of the types of programs offered by the District, and the qualifications of the graduating students. He is assigned a part time secretary who provides him with clerical assistance. Neither the financial aids nor the placement functions involve any direct teaching. Neither function requires certification as a teacher. The Financial Aids, Placement and Veterans Officer is employed on a 12 month basis and is subject to the salary schedule and fringe benefits outlined in the administrative handbook, which are somewhat different from those received by the teachers.

The Adult Basic Education Department concerns itself with the functionally illiterate; those whose reading ability is below the eighth grade level. The instructors who teach in the aforementioned department are not certified and the courses offered by that department are not credit courses. The certification, salary and duties of the positions involved are substantially different than those of the regular teaching faculty. The certification of the Aide to the Adult Basic Education Coordinator does not require a bachelor's degree, as does a teacher's certification. The salary paid to the Aide in question is less than that paid to regular teachers and her duties are clerical vis-a-vis instructional. In fact, the Aide does no teaching in her role as aide.

Because the positions of Financial Aids, Placement and Veterans Officer, and Aide to the Adult Basic Education Coordinator, do not

require teacher training or teacher certification, have no direct teaching responsibility, and are not "supportive" in a manner consistent with the Commission's previous rulings, we conclude that the abovementioned positions are excluded from the bargaining unit. 7/

Guidance Counselors

The four Guidance Counselors employed by the District are under the Assistant Director of Student Services. The Guidance Counselor assists students or potential students in solving academic problems, personal problems and to give said students information concerning careers and vocations. Guidance Counselors work on a 12 month basis and are paid a higher salary than are teachers. A Guidance Counselor must have a master's degree in counseling and two years teaching experience. Twenty percent of a Guidance Counselors' time is devoted to talking to people who desire information. Specifically, they represent the District at area high schools and they are involved in the recruiting of students. A majority of a Guidance Counselor's time is spent dealing with students who are enrolled in a regular program offered by the District. The Guidance Counselor is responsible for admitting students and approving student requests to withdraw from school. Guidance Counselors investigate student complaints against teachers, and they attempt to work out problems which exist between student and teacher. In addition, the Guidance Counselors will on occasion be contacted by instructors who request their advice as to how to improve instruction and maintain classroom rapport.

The District would exclude Guidance Counselors from the unit, contending that they perform a managerial function, and further that they are engaged in a separate profession. The Association contends that the Guidance Counselors should be included in the unit because of their relationship with students and teachers in support of the educational program. We conclude that a majority of the duties performed by the Guidance Counselors are in support of the educational program, and that what managerial tasks they perform are insufficient to warrant their exclusion from the unit. 8/

Athletic Director

The Athletic Director's duties directly involve the organization, coordination, supervision and implementation of all student athletics, varsity and intramural, offered by the District. Currently, the District has five approved varsity sports and two under review. The District is a member of the Wisconsin Technical College Athletic Conference. The Athletic Director officially represents the District at all meetings of the aforementioned conference and is its spokesman concerning the establishment of conference policies, regulations and standards. He is responsible for the development of all calendars of varsity and intramural activities. He prepares a budget for the

7/ E.g., See West Allis-West Milwaukee Board of Education (6677) 4/64 where the Commission found psychologists, social workers and guidance counselors to be "supportive" of an education program. See also Whitefish Bay Education Association (10799) 2/72.

8/ Janesville Board of Education (6678) 3/64; Whitefish Bay Schools (10799) 2/72

operation of the District's sports programs which is in excess of \$30,000 per year. He has an effective role in the hiring of coaches and he directly hires the "supervisors" of the various intramural programs. In addition, he hires approximately 15 to 20 ancillary personnel, such as time keepers and scorers needed to run certain of the varsity sports. Due to the fact that the District does not have any athletic facilities of its own, the Athletic Director prepares the leasing contract between said District and the Pewaukee school district, the facilities of which are utilized by the District. This entails his meeting with the aforementioned school district and negotiating the terms of the lease, which lease is approved by the District's Board. Although the Athletic Director did not select the facilities currently being utilized by the District, he does have the authority to effectively recommend the changing of said facilities in order to acquire the use of improved accommodations. He effectively recommends the addition or deletion of any varsity or intramural athletic programs.

The Athletic Director spends approximately 10% of his time teaching, and, in total, he spends less than 50% of his time in contact with students. He works on a 9 and 1/2 month contract basis, is paid on the same salary schedule as teachers and enjoys the same fringe benefits. There is no state certification requirement for his position as Athletic Director and he is therefore not certificated as such. He spends the remainder of his time as Administrative Aide to the Administrator of Field Services (formerly called Administrator of Center Operations). As Administrative Aide to the Administrator of Field Services, he assists in the recruitment, hiring and firing of all part time instructional staff teaching in the District's evening centers.

Based upon the above, we conclude that the function of the Athletic Director clearly involves the utilization of both supervisory and managerial authority, and that the function as Administrative Aide to the Administrator of Field Services is an administrative activity. Therefore, we are satisfied that, in this case, the Athletic Director should be excluded from the bargaining unit.

Dated at Madison, Wisconsin, this 21st day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

I dissent with respect to the inclusion of the Department Chairmen in the unit.


Jos. B. Kerkman, Commissioner

Dissent with Respect to Inclusion in the Unit

The Department Chairmen have been included in the bargaining unit under the four collective bargaining agreements previously entered into by the parties including the 1971 agreement. While the Department Chairmen are on the same pay schedule as the rest of the instructional staff and while their fringe benefits are identical as those received by the instructional staff, it is clear that the formula determining workload designates one-half of their pay as directly attributable to the performance of their function as a Department Chairman, and is in no way related to the normal regular instruction of students.

The Department Chairmen are included in the grievance procedure as representing the Employer, and have the authority to adjust grievances in what is termed as the informal conference prior to the formal grievance procedure. The collective bargaining agreement is clear that the Department Chairmen have the authority to resolve any grievances that might arise in this informal stage of the procedure.

The record is also clear that the Department Chairmen do, in fact, participate in the hiring process and recommend as to the technical competence of prospective teachers in the system. Furthermore, the Department Chairman of the smallest department in the school, the Accounting Department, has recommended the dismissal of a teacher to the Assistant Director of Instructional Services and that recommendation was followed. The record is further clear that the Department Chairmen participate in establishing departmental budgets, curriculum revision and updating, and the assignment of instructors to courses. The Department Chairmen are responsible not only for the coordination of the students appraisal of instructors, but independently visit the classrooms, observe the teachers and prepare written evaluations based on these observations.

While the evidence in this matter was adduced through the testimony of the Accounting Department Chairman, the smallest department, it would be logical to conclude that if the Department Chairmen of the smallest department of the school exercise this amount of supervisory responsibility, then certainly those Department Chairmen in large departments have proportionately greater supervisory responsibility. I conclude that Department Chairmen should be excluded from the bargaining unit as supervisors.

Dated at Madison, Wisconsin, this 21st day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Jos. B. Kirkman, Commissioner