

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE BOARD OF SCHOOL DIRECTORS

No. 11206-A

"All office, clerical and technical employes, including all persons in ranges 1 through 5 of Schedule A of the clerical, office and technical employes' pay schedule, and including Engineer - Radio-TV, ETV Photographer, ETV Artist, Computer Programmer I, II, and III, Systems Analyst, Systems Analyst Trainee, Machine Accounting Supervisor,*and Buyer I and II, but excluding supervisors, confidential employes and all other employes"

which unit is presently represented by District Council 48, AFSCME. 1/

Given under our hands and seal at the
City of Madison, Wisconsin, this 3rd
day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Blawie
Morris Blawie, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner

* Data Processing Specialist

1/ Should the employe vote not to accrete to said unit, he shall be deemed to have rejected representation.

MEMORANDUM
ACCOMPANYING DIRECTION OF ELECTION

On October 21, 1971, District Council 48 and its Local 1616, AFSCME, hereinafter referred to as AFSCME, filed a petition and an amended petition with the Commission requesting an election among certain employees in the Department of Instructional Resources, Data Processing Department and Purchasing Department of the Milwaukee Board of School Directors, hereinafter referred to as the Employer. The positions involved included:

Department of Instructional Resources:

Engineer - Radio-TV

ETV Photographer

ETV Artist

Radio Producer

Data Processing Department

Computer Programmer I, II, III

Systems Analyst

Systems Analyst Trainee

Machine Accounting Supervisor

Purchasing Department

Buyer I, II

During the hearing on the petition, held on December 13 and 16, 1971, the parties stipulated that all incumbents of the aforesaid positions were professional employees. AFSCME argued that, as stipulated professional employees, the designated incumbents were entitled to an election to determine whether they desired to be included in an existing non-professional employee unit, pursuant to Section 111.70(4)(d)(2)a of MERA.

The Employer contended that although all the specified positions were professional in status, certain incumbents were not employees within the meaning of the Act, in that they were either supervisory, confidential or managerial.

On August 8, 1972, the Commission issued an Order reopening the hearing on the basis that sufficient evidence had not been adduced to establish the professional status of the positions involved. In rejecting the stipulation of the parties, the Commission indicated that:

"If the record establishes that the employees involved are, in fact, professional, then those employees engaged in these separate professions will be given the opportunity to separately vote to determine whether they desire to accrete to the existing unit involved."

As of August 8, 1972 the following labor organizations had been certified by the Commission as the exclusive collective bargaining representatives of employees of the Employer in the following appropriate collective bargaining units:

Organization
Certified

Unit

District Council 48 and its
Local 1616, AFSCME

All playground laborers 1/

District Council 48 and its
Local 1616, AFSCME

District Council 48 and its
Local 1616, AFSCME

District Council 48 and its
Local 1616, AFSCME

District Council 48, AFSCME

District Council 48, AFSCME

District Council 48, AFSCME

District Council 48, AFSCME

Milwaukee Teachers Education
Association

All regular custodial employees
in social centers and play-
grounds 2/

All regular window cleaners and
window chargemen 3/

All truck drivers and stores
clerks I, II and III employed
in the Stores Division of the
Purchasing Department and
Material Handler II and III
employed in the Recreation
Division 4/

All Social Work Aides 5/

All employees of the miscellaneous
repair division and con-
struction division 6/

All office, clerical and tech-
nical employees, including all
persons in ranges 1 through 10
of Schedule A of the clerical
office and technical employees
pay schedule 7/

All full-time clerical hourly
employees and all part-time
clerical hourly employees (who
work an average of 20 hours
more per month, in the
classified service) 8/

All regular teaching personnel
teaching at least 50% of a
full teaching schedule
(including Recreation
Instructor V and Vice-
Principals teaching a full
schedule) 9/

2/ Case I (6019-B) 7/16/62

3/ Case XIII (7793) 12/7/66

4/ Case XVII (8040-A) 2/4/72

5/ Case XX (9000) 5/28/69

6/ Case XXXI (9415)

7/ Case XXXI (9415) 5/24/72

Milwaukee Teachers Education
Association

All school accountants 10/

Milwaukee Teachers Education
Association

All regularly employed substitute per-diem teachers 11/

Milwaukee Teachers Education
Association

All lay Aides, including general Teacher Aides, Technical Aides and Para-professional Aides (excluding Social Work Aides) 12/

Building Service, Local 17

All regular full-time male janitorial helpers and regular part-time janitorial helpers 13/

Building Service, Local 17

All regular cook managers I, II, III, IV, V; all regular child care attendants; and all regular hourly cooks, cook, manager trainees, cook helpers, child care attendants 14/

Operating Engineers, Local 950

All regular firemen-janitors, substitutes for school engineers, and school engineers I, II and III 15/

Prior to Commission action with respect to the matter, AFSCME, on June 26, 1972, filed a petition with the Commission requesting an election among employees of the Employer in a claimed appropriate unit, described as follows:

"All part time and full time hourly employees in the classified service of the Employer, excluding all clerical and all represented employees (including Ball Attendants, Field Attendants, Play leaders, Social Center Attendants, Census Takers, Extra Curriculars, Truck Drivers [outside Purchasing Department] and certain non-represented Aides)." 16/

On August 8, 1972, following the filing of a petition to clarify bargaining unit, the Commission, upon the joint request of AFSCME and the Employer, transferred the positions of Audio-Visual Assistant in the Department of Instructional Resources, originally included in the

10/ Case XVIII (8625) 8/29/68

11/ Case XIX (8901) 5/9/69

12/ Case XXIV (9001) 6/20/69

13/ Case II (6020) 7/16/72

14/ Case III (6021) 7/16/72

15/ Case IV (6022) 7/16/72

16/ Case XXXIX (Hearing commenced September 1, 1972)

in the unit consisting of "office, clerical and technical employees" 17/
to the unit consisting of "all employees of the Miscellaneous Repair
Division and Consturction Division". 18/

The hearing with respect to the alleged professional positions in issue was reopened on September 1, 1972, during which AFSCME indicated that it had no intention of introducing further evidence or making additional arguments with regard to the issue of the professional status of the positions involved. The Employer stated that it was prepared to provide additional testimony and evidence to substantiate its contention that said positions were professional within the meaning of MERA, Section 111.70(1)(L).

Evidence with respect to the requirements for the various classifications in issue and with respect to the duties performed by the employees occupying such classifications were adduced during the hearing.

Engineer - Radio and Television

According to the position description, the Engineer - Radio-TV performs a variety of technical duties relating to radio and television transmission. His basic function is described as follows:

"Under the supervision of the Chief Engineer, [is] to operate and maintain the transmission and studio equipment of an ITFS system, FM radio station, and Tone Alert System."

His responsibilities include: setting up various transmitters; setting up, loading and operating projectors and tape machines; operating controls and equipment for audio programming and program production, Audio and Video Patch System, and an encoder for the Tone Alert System; and keeping a program log for the FM station.

Applicants for the Engineer - Radio-TV must be graduates of a technical college in electronics or must possess four years of suitable work experience. Furthermore, the incumbent is required to pass a comprehensive Federal Communications Commission examination in electronics.

The Engineer - Radio-TV possesses extensive skills related to specialized knowledge in electronics. Successful completion of a FCC electronics examination is a requirement of the position. However, there is no indication that the position requires the consistent exercise of discretion or the performance of varied or intellectual tasks customarily associated with professional status.

ETV Photographer

ETV Photographer shoots 16mm color and black and white motion picture films for television and special programs and meetings. In addition, he: shoots slides, engages and assists in filmstrip production and photographic planning, maintains photographic equipment and orders equipment.

The position requires high school graduation, plus two years additional training at an art institution, such as the Layton School of Art. In that the ETV Photographer position, in the instant case, does not require prolonged, specialized intellectual instruction and study in an institution of higher education, the incumbent is not considered a professional employee. Admittedly, the ETV Photographer's work may be varied and discretionary in subject matter. However, the basic photographic skills required to shoot film and slides or

17/ Case XXVI

18/ Case XXXI

to offer technical advice to users may be classified as routine mental and mechanical work.

ETV Artist

The hiring standards for the position of ETV Artist consist of high school graduation and completion of two additional years of art training. The ETV Artist's duties are set forth as follows:

"Prepares illustrations for curriculum guides, books and administrative reports, illustrations, lettering and animation for TV programs and cover designs for Central Office publications."

A variety of graphic art work is engaged in by the ETV Artist. Although the ETV Artist exercises artistic talent and judgment, the training required for the position cannot be regarded as that, "customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education." In that the artistic skills exercised may be largely regarded as routine, the position is not considered professional in the instant proceeding.

Radio Producer

The primary function of the Radio Producer is to:

"Plan, produce, and present administrative and community information programs for broadcast to the staffs of the Milwaukee Public Schools and the community at large."

In addition, he is responsible for: assisting the Radio and TV Coordinator in locating and screening radio programs broadcast by outside agencies, conferring with various administrators and supervisors on questions regarding broadcast content, producing materials used as aides and supplements to the broadcasts, and regularly attending staff and community meetings as needed.

Testimony indicated that the Employer initially sought to fill the Radio Producer position with an individual holding a Master's degree in Communication Arts. However, the lack of applicants possessing an appropriate degree, resulted in the hiring of an applicant with a Bachelor's degree in the field who is presently working toward the Master's degree.

Computer Programmer I, II and III

The Computer Programmer III's basic function is to:

"Perform the full range of computer programming which includes writing, debugging, and implementing the most complex computer programs and modify and maintain existing complex programs."

Other duties include: assisting in developing and designing new systems, completely designing simple systems, using various computer languages, and training lower level computer programmers and computer operators.

Applicants must possess a high school diploma or certification of high school equivalency or passage of the G.E.D. test. In addition, they are required to have at least two years of college-level training at a school approved by the Milwaukee City Service Commission. A minimum of two years experience in procedures and/or data processing

work is also required. However, applicants may be hired at the trainee levels of Computer Programmer I and II. Programming training may be received on the job or in a prior similar position. After an established training period of from two to four years, Computer Programmers I and II may ultimately be promoted, upon passage of examination, by action of the Division head to full journeyman level of Computer Programmer III.

Systems Analyst and Systems Analyst Trainee

The System Analyst's basic function is to:

"Design, develop and implement new systems which will utilize electronic data processing equipment."

The job responsibilities include: consulting Employer personnel to determine objectives of proposed systems, writing procedures, preparing flow charts, training personnel in new operations and procedures, devising methods of special data collection, and reporting and adjusting system irregularities.

The hiring standards specify that applicants must possess a Bachelor's degree from an accredited college or university, or from a school approved by the Milwaukee City Service Commission and at least two years experience in Computer Systems work, including one year experience in advanced disk file organization techniques. Applicants with appropriate college degrees may be hired at the Systems Analyst trainee level. Upon completion of a two-year training period, passage of a qualifying examination and the Division head's recommendation, he may be promoted to Systems Analyst.

Machine Accounting Supervisor

The Machine Accounting Supervisor position requires the possession of a high school diploma. The basic function of the position is to:

"Conduct the annual school census and operate the optical scanning equipment."

The Machine Accounting Supervisor is also responsible for: recruiting, training, supervising and disciplining census enumerators; and maintaining performance records and salary authorization for the enumerators. In addition, he assists in census design and methods revisions; and processes census cards.

Buyer I and II

The duties of the Buyer II are described as follows:

"Independently performs purchasing assignments of certain classes of commodities."

Buyers' duties include: preparation of bid specifications; arrangement for tests of items; maintenance of inventories, new stock items; deletion of obsolete stock from catalog; direction of salesmen interviews; processing of formal and informal bids; and recommendation of bid award.

The hiring requirements for the position consist of graduation from an accredited college or university, or a school approved by the Milwaukee City Service Commission, with major course emphasis in Business Administration or closely related fields. Applicants, holding appropriate college degrees may be appointed as Buyer I. After at least two years of experience, Buyer I may be eligible for promotion to Buyer II under the following

conditions: successful completion of a) an appropriate qualifying examination for Buyer II, b) recommendation of the Director of Purchasers.

DETERMINATION AS TO PROFESSIONAL STATUS

Section 111.70(1)(L) provides as follows:

"(1) 'Professional employee' means:

1. Any employee 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 a character that the output produced or the result accomplished cannot be standardized (sic) 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

2. 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 himself to become a professional employee as defined in subd. 1."

Section 111.70(4)(d)2. a. provides, in part, as follows:

"The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit."

The Commission has indicated in the past that it will determine the professional status of employees on a case-to-case basis. In doing so, consideration is given to the nature of the profession, training and duties of the employee. Weight is also given to the extent to which skills exhibited by alleged professionals differ from the duties performed by other employees of the Municipal Employer. 19/

On the basis of the record and in applying the criteria set forth in Sec. 111.70(1)(L), the Commission concludes that the positions of Engineer Radio-TV, ETV Photographer, ETV Artist, Computer Programmer I, II and III, Systems Analyst, Systems Analyst Trainee, Machine Accounting Supervisor, Buyer I and II are not professional employees within the

19/ Winnebago County Hospital (6043) 7/62; City of Wausau (6276) 3/63.

meaning of the Act. However, in light of the specialized intellectual instruction and creative, discretionary nature of the work, the Commission finds the Radio Producer to be a professional employee. Even though the incumbent Radio Producer, upon hire, did not possess a Master's degree in Communication Arts, his duties appear to be significantly different from those of other employees of the Employer and sufficiently intellectual, varied and discretionary to warrant professional status.

DETERMINATION AS TO MANAGERIAL AND/OR SUPERVISORY STATUS

The Employer additionally advanced the argument that the following positions are managerial and as such should be excluded from the unit: Buyer I, II, Computer Programmer I, II, III, System Analyst and System Analyst Trainee. Further, it is contended the position of Machine Accounting Supervisor should be excluded on the basis of supervisory responsibilities.

The Employer points out that the revised statute 111.70 specifically refers to the managerial category as being excluded from the definition of employee but no definition of managerial is included in the statute. In the absence of a definition the Employer suggests reliance on the case pattern of the NLRB on the subject which in summary states "those who formulate, determine and effectuate management policies".

In the case of the Machine Accounting Supervisor position the Employer points out the hiring and supervising of a certain number of school census takers during a seven month period each year as justifying supervisory status.

The position responsibilities have been detailed previously in this memorandum in respect to the professional status determination. Reviewing each position and the attending testimony and exhibits leads to the conclusion that none of the positions fall into the managerial category. The Buyer I, II positions involve reordering of established stocks of specific items, initiation of new sources or products in some instances, recommending of bids for approval, inventory maintenance and salesmen interviews. The sum of these functions could not in reality constitute "formulating, determining, and effectuating management policies", even if such criteria is read into the statute or relied on as an NLRB guide.

The inclusion of the terms "managerial" and "executive" in the amended statute as being categories excluded from coverage by the Act does indicate the legislature intended to recognize a strata of functions within the political entity that would be charged with the responsibility of determining, within established limitations, the most feasible and effective methods of attaining its goals. These determinations, which in effect constitute policy, are established as an operational guide within which functions such as purchasing, computer programming and systems analysis carry out their prescribed functions. The positions that the Employer has advanced as managerial cannot be construed as policy formulating activities or be excluded as managerial under the Act.

The Machine Accounting Supervisor position involves control over school census takers for a period of seven months each year. During the remainder of the year the position involves other non-supervisory functions. The position involves hiring, orienting and following up on the results of the school census takers but does not involve a continuing supervision of the individuals if after a reasonable period of time a census taker fails to submit reports, an investigation is initiated.

Testimony indicates that a periodic analysis of returns from the census takers is designed primarily to avoid a pile-up of unfinished census taking toward the end of the prescribed period. From the testimony and analysis of the record the position of Machine Accounting Supervisor does not fall under the meaning of supervisor as covered by Section 111.70(1)(o)(1). 20/

The record in the instant case was ordered reopened August 8, 1972 for the purpose of introducing evidence related to a new position entitled Data Processing Specialist and after review of such testimony and evidence it is evident the new position parallels the duties of the systems analyst position and it is ruled non-professional and non-managerial.

SUMMARY:

Since we have determined that the Radio Producer is a professional employe, said professional employe may, pursuant to Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, constitute a separate unit. Said section permits professional employes to be included in a unit of non-professional employes where a majority of the professional employes involved vote for inclusion in the non-professional unit. The Commission concludes that it is appropriate to grant the Radio Producer the right to determine for himself whether he desires to accrete to the existing unit in Case XXVI. Should the Radio Producer vote in favor of such accretion, the Commission will further amend the description of the bargaining unit in that case. However, in the event that the Radio Producer votes against such accretion, since only the petitioning Union seeks to represent the Radio Producer, the Commission will conclude that the Radio Producer has rejected representation for the purposes of collective bargaining.

Since the positions of the Engineer - Radio - TV, ETV Photographer, ETV Artist, Computer Programmer I, II and III, Systems Analyst and Systems Analyst Trainee, Machine Accounting Supervisor and Data Processing Specialist* have been found neither professional, supervisory, nor managerial employes, they are considered to be "technical" employes, and, therefore, they are being accreted to the unit established in Case XXVI, wherein the unit involved is presently represented by District Council 48, AFSCME, AFL-CIO. In that regard the

** and Buyer I and II*

20/ Rock County (Highway Dept.) (6144-B) 5/68. Job titles and classifications assigned to municipal employes are not determinative as to whether the employes holding such classifications or titles are to be included or excluded in public

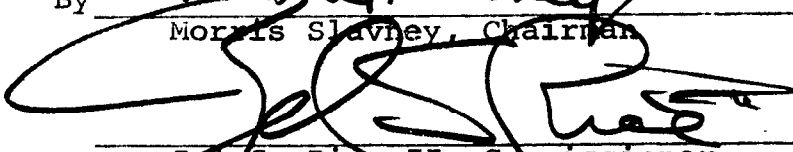
Commission will issue an amended Certification in that case following the certification of the results of the election involving the Radio Producer.

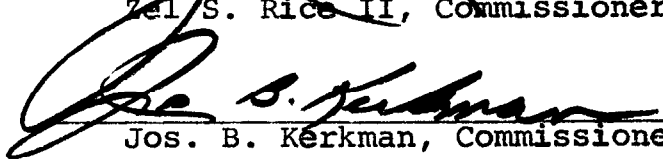
Dated at Madison, Wisconsin, this 3rd day of August, 1973.

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