

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN FEDERATION OF TEACHERS, LOCAL 395, AFT, AFL-CIO
Involving Certain Employees of
WISCONSIN INDIANHEAD TECHNICAL COLLEGE

Case 1
No. 56086
ME-925

Decision No. 11380-C

Appearances:

Mr. William Kalin, Staff Representative, Wisconsin Federation of Teachers, 6659 East County Road B, South Range, Wisconsin 54874, appearing on behalf of Wisconsin Federation of Teachers, Local 395, AFT, AFL-CIO.

Weld, Riley, Prens & Ricci, S.C., by **Attorney Victoria L. Seltun**, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, WI 54702-1030, appearing on behalf of Wisconsin Indianhead Technical College.

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

Wisconsin Federation of Teachers, Local 395, AFT, AFL-CIO filed a petition to clarify bargaining unit on January 23, 1998, with the Wisconsin Employment Relations Commission seeking to include the classification of Student Services Specialists in an existing unit of Wisconsin Indianhead Technical College employees that it represents. Hearing was held in Shell Lake, Wisconsin, on October 13, 1998, by Examiner Lionel L. Crowley. The hearing was transcribed and the parties filed briefs which were exchanged on December 22, 1998. The parties reserved the right to file reply briefs by notifying the Examiner five days after receipt of the opposing party's brief. Neither party did and the record was closed on December 30, 1998.

No. 11380-C

The College opposes inclusion of the Student Services Specialists on the basis that: (1) the parties have agreed to exclude the position; and (2) the employees are managerial.

The Commission, having reviewed the matter and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Federation of Teachers, Local 395, AFT, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 6659 East County Road B., South Range, Wisconsin 54874.

2. Wisconsin Indianhead Technical College, hereinafter referred to as the Employer, is a municipal employer and has its principal offices at 505 Pine Ridge Drive, Shell Lake, Wisconsin 54971-9300.

3. The Union is the recognized exclusive collective bargaining representative of a unit of employees of the Employer described in the parties' 1996-1998 contract as follows:

all teachers teaching at least 50% of a full teaching schedule in their area (a full teaching schedule shall consist of the normal student contact hours), Student Counselors, Librarians, Career Education Evaluators, and School Health Nurses employed full-time by the Wisconsin Indianhead Technical College. From this unit the following management positions are excluded: Assistant Directors, Administrators, Subject Discipline Coordinators, Instructional Services Coordinators, Grants and Contracts Coordinators, Public Relations Officer, Law Enforcement Specialist, High School Relations Specialist, Student Services Outreach Specialists, CETA Counselor, Native American Liaison Specialist, Nursing Assistant Specialist, Program, Department and/or Special Services Supervisors, Data Processing Programmer. Tribal Financial Management Training Specialist, Tribal Leadership Training Specialist, Fire Training Specialist, Emergency Medical Services Specialists, Supervisors Management Specialists, Financial Aids Officer, and Program, Department and/or Special Services Assistants. Also excluded from this unit are any employees considered administrative, supervisory, managerial, confidential, custodial and clerical not mentioned above.

4. The position description of the Student Services Specialist reads as follows:

JOB FUNCTION:

Under the direction of the Student Services Dean, shall provide student services for outreach centers and communities, and recruitment in assigned territory.

JOB RESPONSIBILITIES:

1. Foster, promote and recommend student services in outreach centers.
2. Provide outreach services including but not limited to the following: admissions, registration, and counseling functions.
3. Assist in the development and coordination of career counseling functions in outreach areas.
4. Assist in the development of college and regional planning for student services.
5. Maintain contact with federal, state and local agencies serving disadvantaged and handicapped students to provide information on WTCS opportunities.
6. Assist in policies and procedures development necessary to comply with regulations established through federal/state government and/or certifying agencies as they affect student services.
7. Assist in the development of projects related to student services; supervise assigned projects and/or activities as they relate to student services.
8. Provide recruitment services that identify potential students for training in college programs and/or special projects.
9. Provide employment services at outreach centers.
10. Provide financial aid information to outreach areas in accordance with college policies and procedures.
11. Plan, develop, and implement collegewide recruitment strategies for the high school market.
12. Monitor budget, investigate new materials and testing sources, purchase materials, software and hardware as determined, by needs.

13. Serve as a representative on assigned WTCS State Board Marketing/High School Relations committee and other appropriate agencies, i.e., CESA, School-to-Work consortia.

14. Will perform in addition to the above responsibilities, those services as required and assigned.

Internal Responsibilities:

1. Work cooperatively with college staff in serving the handicapped and disadvantaged.

2. Work cooperatively and assist campus Student Services Directors in providing student services.

3. Actively participate in appropriate regional Enrollment Management Team providing input on student services and budgetary needs for effective implementation of plans.

4. Serve as a member of the campus management operations team and input source for operations of campus.

External Responsibilities:

1. Serve as the college's liaison with high schools, local agencies, and the public to promote enrollment in all courses and programs of the college.

2. Maintain contacts with local agencies to promote relationships and cooperative planning activities to serve the handicapped and disadvantaged (transitioning).

3. Build strong relationships with area high schools through connecting activities with counselors and career awareness instructors.

QUALIFICATIONS

1. Bachelors' degree in appropriate field with at least 20 credits in counseling OR Master's degree in guidance and counseling.

2. Experience and/or course work in career assessment and career counseling required.

3. Certification or certifiable in administration of Myers-Briggs Type Indicator personality assessment preferred.
4. Ability to relate to and work diverse groups of people.
5. Ability to plan, implement and coordinate services with other School-to-Work staff and other agencies.
6. Experience in conducting workshops.
7. Minimum of two years occupational experience in non-educational setting.

5. In 1981-82, the parties negotiated a contractual recognition clause which excluded the High School Relations Specialist, Student Services Outreach Specialist, CETA Counselor, Native American Liaison Specialist, etc., from the bargaining unit as "management." Thereafter, the funding for these positions ended and in 1984, all the incumbents were laid off, terminated or shifted to different positions.

6. In 1995, Gary Gibson was hired as a High School Relations Outreach Specialist and provided career assessment and career counseling to high schools. The position was funded by a CESA 12 School-to-Work Consortium Grant and served as a career development specialist with high schools and Gibson essentially worked for the Consortium. The Employer started funding the position half time, then three quarters and then 100%. Because enrollment at the Employer was down, the Employer used the position for recruitment as well as career development. In late 1996, the Employer hired Becky Lothe as a second High School Relations Outreach Specialist. In 1998, the Employer created the job description for Student Services Specialist and the High School Relations Outreach Specialist positions became Student Services Specialists. A third Specialist position was created and filled by Fae LaForte. The Specialists are the functional equivalents of Student Services Outreach Specialists excluded by the existing recognition clause.

7. Approximately 80% of a Student Services Specialist's time is spent testing at various high schools for career assessment and performing follow up. The Student Services Specialist is also assigned recruitment activities as part of the career assessment at high schools and they attend career fairs and conduct summer technical camps to introduce students to the Employer. Approximately 80% of the time, the Student Services Specialist performs work off campus. All three incumbents report to Miriam Crandall, Dean of Student Services, who is their immediate supervisor, although each Specialist does take instructions from their assigned campus administrators. The Student Services Specialist's budget for supplies is \$3,000 per year with most of this spent for testing materials, the travel budget is \$11,000 per year and the

meeting budget is \$2,000. The Specialists have little or no input in establishing the budget. They have no discretion to make expenditures or move money around in the budget. The Specialists make a written request to Ms. Crandall who approves the expenditures.

The Specialists sit on the Enrollment Management Committee but as of the hearing date, their limited input had not been acted upon. The Specialist's salary is less than that of represented employes in the unit.

8. The Student Services Specialists do not have sufficient participation in the formulation, determination and implementation of policy or have sufficient authority to commit the Employer's resources to make them managerial employes.

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

CONCLUSION OF LAW

The Student Services Specialists are not managerial employes within the meaning of Sec. 111.70(1)(i), Stats., and therefore are municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission hereby makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The position of Student Services Specialist is hereby included in the professional bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of February, 1999.

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

WISCONSIN INDIANHEAD TECHNICAL COLLEGE

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

POSITIONS OF THE PARTIES

The Union, contrary to the Employer, contends that the position of Student Services Specialist is not managerial and should be included in the unit. It submits that the testimony of Gary Gibson and Rebecca Lothe supports its position that the Student Services Specialist position does not participate in the formulation, determination and implementation of management policy nor have the authority to commit the Employer's resources.

With respect to the Employer's argument that the parties voluntarily agreed to exclude a position titled Student Services Specialist in 1981 or 1982, the Union argues that the reason the parties excluded that position was because they agreed it was managerial. Therefore, it asserts that inclusion of the Specialists is not barred by the Commission's "deal is a deal" doctrine. It asks the Commission to alter the existing bargaining unit to include the position of Student Services Specialist.

The Employer contends that the parties specifically bargained the Student Services Specialist position out of the bargaining unit in 1981-82. Citing ELCHO SCHOOL DISTRICT, DEC. NO. 27640-C (WERC, 4/97), the Employer observes that the Commission will not consider modifying a voluntarily agreed-upon unit unless one of the following four factors is present:

1. The position did not exist at the time of the agreement; or
2. The position in dispute was included or excluded because the parties agreed that the positions were or were not supervisory, confidential, managerial, etc.; or
3. The position has been impacted by changed circumstances which materially affect its status; or
4. The unit is repugnant to MERA.

The Employer asserts that none of these factors are present and the agreement to exclude the Specialists must stand as “a deal is a deal.” The Employer states that when the exclusion agreement was reached, the managerial status of the Specialists was unclear because the incumbents performed some bargaining unit work. Thus, agreement was reached to exclude them whether they were managerial or not. It concludes that the Commission should honor the “deal” and not modify the existing unit.

Should the Commission conclude the petition is not barred by a “deal,” the Employer takes the position that the current job responsibilities of the Student Services Specialist are “managerial” in nature. It points out that Gary Gibson serves on various management committees or teams and has offered input and ideas on how the goal of increasing the number of students coming directly from high school could be achieved. It notes that Gibson serves on the Recruitment Committee and also the Campus Management Operations team which has no bargaining unit members on it. It alleges that any policy decisions acted on by the Enrollment Management Committee will be implemented by the Student Services Specialist. It submits that the Student Services Specialists are responsible for the development of testing strategy and for prioritizing or determining which tests to administer. It states that Gibson was responsible for implementing the Summer Technical Camp and for coordinating and managing the Youth Options Program. It argues the bottom line is that Gibson utilizes discretion and independent judgment in determining, formulating and implementing policy on behalf of the Employer which significantly affects the nature and direction of the Employer, especially in the area of student services. It contends that Rebecca Lothe performs similar duties.

The College notes that the Student Services Specialists had explicit input into planning over the evolution of the position’s future. It maintains that they work independently and have budgetary responsibilities including recommendations for supplies and travel.

The Employer maintains that the Student Services Specialists’ involvement in program and policy matters is at a relatively high level of responsibility and, despite the limited budgetary or resource allocation responsibilities, are managerial employees because of program and policy responsibilities.

In conclusion, the Employer contends that the Student Services Specialists are significantly different from represented teachers and counselors as they have managerial responsibilities for the programs they support. It submits the position has evolved to entail more recruitment functions and less career development and counseling functions. It insists there is no community of interest between these positions and the represented employees as the clientele is different, the hours are different, and the Student Services Specialist frequently travels spending roughly 80% of his/her time off campus. The Employer again contends that the positions were excluded from the unit by a joint agreement and for the reasons argued above are properly excluded from the bargaining unit and should continue to be excluded.

DISCUSSION

The Employer has urged the Commission not to modify the bargaining unit because the parties specifically agreed to exclude the Student Services Specialist.

We will not consider modifying a voluntarily agreed-upon unit unless:

1. The position(s) in dispute did not exist at the time of the agreement; or
2. The position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential etc.; or
3. The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; or
4. The existing unit is repugnant to the Act.

BARRON COUNTY, DEC. NO. 18583-A (WERC, 1/98); CITY OF RICHLAND CENTER, DEC. NO. 17950-A (WERC, 2/96).

Based on the record in the instant case, we are persuaded criterion number two has not been satisfied. The contractual recognition clause states that “the following management positions are excluded: . . . Student Services Outreach Specialists.” (Emphasis added) The Vice President of Human Resources, Wayne Sabatke, testified that when it was agreed to exclude those positions, it was because the parties considered them managerial (Tr. 105, 124). From this evidence, we conclude that the parties agreed to exclude the positions because they were managerial. Thus, the criteria set out above do not preclude a unit clarification to determine whether the Specialists should be added to the unit.

As to whether the Student Services Specialists are managerial employes, the Commission addressed the question of managerial status in TAYLOR COUNTY, DEC. NO. 24261-E (WERC, 7/97), wherein it stated:

The legislature has excluded “managerial” employes from the Sec. 111.70(1)(i), Stats., definition of “municipal employe”, but it has not provided a statutory definition of that term. Thus, the definition of a managerial employe has been developed through case law.

There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers whether the individual possesses the authority to commit the employer's resources.

For an individual to assume managerial status based on participation in policy, such involvement must be "at a relatively high level of responsibility" (sic) Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided or the kind and number of employees to be used in providing services.

See also VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88).

The record establishes that the Student Services Specialists' authority to commit the Employer's resources is minimal. They have no responsibility to establish the budget and the expenditures from the budget are made to purchase testing materials or supplies as needed. Indeed, even as to purchases, they must secure the approval of their supervisor, Dean Crandall. The budgeted items for supplies, travel and meetings are allocated so that the Student Services Specialists can perform their jobs. The Specialists' use of the funds is ministerial and cannot be said to significantly affect the nature and direction of the Employer's operations.

As to the participation in policy, the Student Services Specialists' involvement is not at a relatively high level of responsibility. The Employer has established a policy of increasing enrollment. The Student Services Specialists' simply provide recruitment suggestions and advice based on their professional expertise and judgment.

Gibson has been on the Enrollment Management Committee but could think of none of his input that had been acted upon. Gibson also sits on the Management Team and his input and recommendations are under advisement. Lothe has not yet attended a meeting of the Management and Enrollment Committee. The record fails to establish any significant input on policy even at a low level.

Thus, we conclude that the Student Services Specialist is not managerial.

In the conclusion of its brief, the Employer suggested that there was not a community of interest between the Student Services Specialists and the members of the bargaining unit. In NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 11602-A (WERC, 11/95), the Commission held that there was no logical reason not to conclude that the factors of anti-fragmentation and community of interest both warrant the inclusion in one unit of all

professional employees of an employer who work in support of the educational program. In support of its conclusion, the Commission specifically cited WISCONSIN INDIANHEAD VTAE DISTRICT, DEC. NO. 11380-B (WERC, 6/87), where it included the "Student Health Nurse" in a unit of teachers, student counselors, librarians and Career Education Evaluators. Although the issue was not formally raised, we therefore reject the Employer's arguments that the Student Services Specialists do not share a sufficient community of interest to be included in the existing unit of represented professional employees.

Given all the foregoing, we have ordered the inclusion of the position of Student Services Specialist in the bargaining unit.

Dated at Madison, Wisconsin, this 8th day of February, 1999.

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner