

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
VOCATIONAL, TECHNICAL AND ADULT
EDUCATION DISTRICT #5 (BLACKHAWK
TECH.)

and

BLACKHAWK TECHNICAL FACULTY FEDERATION
(AFT), LOCAL #2308

For Clarification of the Bargaining
Unit of Certain Employees of

VOCATIONAL, TECHNICAL AND ADULT
EDUCATION DISTRICT #5 (BLACKHAWK TECH.)

Case II
No. 16618 ME-898
Decision No. 11726-A

Appearances:

Mr. John H. Stevens, Representative, appearing on behalf of
the AFT.

Mr. W. A. Bolgrien, Attorney, appearing on behalf of the
Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT

Vocational, Technical and Adult Education District #5 (Blackhawk Tech.) and Blackhawk Technical Faculty Federation (AFT), Local #2308, having petitioned the Wisconsin Employment Relations Commission to issue an Order clarifying an existing collective bargaining unit of certified teachers in the employ of Vocational, Technical and Adult Education District #5 (Blackhawk Tech.); and hearing on such petition having been conducted at Janesville, Wisconsin, on May 1, 1973, Kay Hutchison, Hearing Officer, having been present; and the Commission having considered the evidence and arguments of Counsel, and being fully advised in the premises, makes and files the following

ORDER

That the collective bargaining unit consisting of all full time teaching personnel in the employ of Vocational, Technical and Adult Education District #5 (Blackhawk Tech.) excluding clerical, custodial and supervisory personnel, appropriately includes the full-time positions of Student Counselor, Librarian and Federally Funded Teacher.

Given under our hands and seal at the
City of Madison, Wisconsin, this 30th
day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

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

No. 11726-A

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

Vocational, Technical and Adult Education District #5 (Blackhawk Tech.), hereinafter referred to as the Municipal Employer, and Blackhawk Technical Faculty Federation (AFT), Local #2308, hereinafter referred to as AFT, jointly petitioned the Commission to clarify the existing collective bargaining unit with respect to the inclusion or exclusion of certain disputed positions. The ballots of said incumbents were challenged in a WERC election which certified AFT as the exclusive collective bargaining representative for "all full time teaching personnel, excluding clerical, custodial and supervisory personnel" employed by the Municipal Employer. 1/ Although not determinative of the election results therein, the parties stipulated to the submission of the determination to the WERC. Specifically, the parties request clarification of bargaining unit inclusion or exclusion of the positions of Student Counselor, Librarian and Teacher of Federally Funded Programs.

Student Counselor

One Student Counselor is employed by the Municipal Employer at the Janesville campus and one at the Beloit campus. The position is directly responsible to the Administrator of Student Services. Although the position of Student Counselor is certified, the incumbents thereof are not directly engaged in the teaching process, and the duties of the position primarily consist of the following:

- "1. To counsel with students in the areas of vocational, academic and personal problems, including financial aids.
2. To assist the Administrator of Student Services with registration, admissions counseling and orientation of students.
3. To be responsible for articulation with secondary schools, other vocational-technical schools and colleges as directed by the Administrator of Student Services. The following are examples: career presentations, visitation days, open houses, dissemination of pertinent occupational information, direct information and correspondence for career and college nights or days in our institutions.
4. To assist the Administrator of Student Services in establishing an official Blackhawk Tech Placement Office for graduates, former students and students seeking temporary or permanent employment.
5. To assist the Administrator of Student Services in conducting annual follow-up studies.
6. To be responsible for federally funded student services projects and functions as assigned by the Administrator of Student Services."

1/ Blackhawk Voc., Tech. & Adult Ed. District #5 (11111) 7/72.
certified 8/72.

The Student Counselors are employed on an extended contract basis. In addition to their student related duties, they provide testing services for local Police and Fire Commissions and private industry. One of the Counselors has assumed responsibility for financial aids within the District.

The Municipal Employer, contrary to AFT, argues that the Student Counselors should be excluded from the collective bargaining unit on the basis of their alleged confidential and supervisory status. The Student Counselors, according to the Municipal Employer, have access to confidential matters concerning students and the public.

The Commission has found various positions to be confidential on the basis that they are privy to confidential matters relating to labor relations. 2/ The evidence adduced at the hearing established that Student Counselors have no knowledge of or access to confidential matters concerning labor-management relations.

There is no evidence that the Student Counselors have the "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, ..." 3/ We conclude that the position of Student Counselor is not supervisory and is appropriately included in the unit of teaching personnel.

We are satisfied that the Student Counselors share a community of interest with the certified teaching staff as evidenced from their similar educational background and integral role in the educational program. This Commission has included counselors in collective bargaining units consisting of certified teaching personnel who, "although not directly engaged in normal classroom teaching, work directly with students or with teachers, other than in a supervisory capacity, in support of the educational program." 4/

Librarian

The incumbent Librarian, Mrs. Sweeney, has been employed by the Municipal Employer for the past three years. Mrs. Sweeney, as certified Librarian, oversees the operation of the libraries located on each campus. The Librarian divides her time between the two campuses. Each library is staffed with a full time library aide. Subsequent to assuming the position of Librarian, Mrs. Sweeney participated in the interviewing of a recently hired aide. It was not established whether such participation was determinative in the decision to hire the particular individual. Mrs. Sweeney orders periodicals and materials for the libraries, with the Business Manager's budgetary approval and signature on the purchase order.

The job description for the Librarian states that:

"The Librarian is responsible to the Administrator of Instructional Services for the organization, administration, supervision and implementation of procedure

2/ City of Green Bay (8390) 2/68; Chippewa Co. (8727) 10/68.

3/ Municipal Employment Relations Act, Section 111.70(o)(1).

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

and responsibilities concerned with the technical libraries in the District. The duties shall include:

1. To coordinate all activities of the two technical libraries at both campuses.
2. To supervise and direct the activities concerned with efficient library service.
3. To assist, instruct and encourage students in the use of library facilities in the District.
4. To actively serve on the Learning Resource Committee.
5. To receive and process all recommendations for the purchase of new library books and periodicals in cooperation with the instructional staff.
6. To be responsible for all accessories and equipment in the technical libraries in the District.
7. To keep administrative staff, instructors, and students informed of new library materials that have been obtained.
8. To assist the faculty in the selection of library materials to be used in the instructional program.
9. To assist the Administrator of Research and Development with the operation of the research library."

Based upon the evidence presented during the hearing, we conclude that the Librarian's duties primarily consist of the exercise of expert knowledge in library science as opposed to the supervision of employees. We are satisfied that the Librarian's responsibility for library functions and activities does not include effective supervisory authority over subordinate employees. As in the preceding discussion of the Student Counselor, we find the non-teaching Librarian to have a sufficient community of interest with the teaching staff to warrant inclusion in the existing collective bargaining unit comprised of teaching personnel.

Federally Funded Teacher

During the 1972-73 school year, approximately twenty teaching positions in the District were federally funded. Individuals occupying federally funded positions were hired via letters of intent and worked on a week by week basis. They are compensated by an hourly rate ranging from \$5.50 to \$6.20. The positions are supervised by the director of the part-time programs. The incumbents may participate in the hospitalization plan at their own expense. Individuals assuming the federally funded positions are subject to the certification requirements established by the State Vocational Board.

The Municipal Employer argues that the programs taught by the federally funded teachers are unique to the District's educational program and do not duplicate courses taught by the regular teaching staff. As such, the Municipal Employer, avers that the programs are funded on a year by year basis and may be discontinued for any subsequent academic year.

The AFT argues that the funding of the various programs should not be determinative of the disputed positions eligibility for representation.

Having reviewed the record, the Commission finds that the primary basis for the Municipal Employer's assertion that the federally funded teachers be excluded from the collective bargaining unit, rests upon the source of funding rather than upon the duties of the positions. The Commission has held that employees will not be excluded from a collective bargaining unit solely on the basis of the federal or state derivation of program funds, or on the basis that funds are allocated on a year by year basis. 5/

Furthermore, although the federally funded teachers are paid on an hourly basis and do not receive all the fringe benefits afforded the locally funded teaching staff, the homogeneity of the teaching profession outweighs the distinctions in their conditions of employment. It is unclear whether the majority of the federally funded positions are full-time or part-time in nature. However, we conclude that the full-time Federally Funded Teachers are properly included in the unit of all full-time teaching personnel.

Dated at Madison, Wisconsin, this 30th day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner

5/ Superior Vocational School (7479) 2/66; Milwaukee Board of School Directors (9000) 4/69; Adams-Friendship Area Schools (11881) 5/73.