

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

BOARD OF EDUCATION, JOINT SCHOOL
DISTRICT NO. 1, CITY OF GREEN BAY and
the TOWNS OF ALLOUEZ, BELLEVUE, DEPERE,
EATON, GREEN BAY, HUMBOLT AND SCOTT,
BROWN COUNTY, WISCONSIN,

Case XVII
No. 15884 ME-823
Decision No. 11849

Involving Certain Employees thereof

Appearances:

Mr. Ervin L. Doepke, City Attorney and Mr. Donald A. Vander Kelen,
Negotiator for the Petitioner.
Mr. Robert C. Kelly, Attorney and Mr. Larry Hathaway, Executive
Director, Green Bay Education Association.

ORDER CLARIFYING BARGAINING UNIT

The Board of Education, Joint School District No. 1, City of Green Bay, having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify the voluntarily recognized bargaining unit represented by Green Bay Education Association, consisting of non-supervisory certificated teaching personnel and to rule as excluded a proposed new position of Administrative Assistant-Counselor as supervisory and/or confidential; and a hearing in the matter having been conducted on August 24, 1972 at Green Bay, Wisconsin, John T. Coughlin, Hearing Officer, being present; and the Commission having considered the evidence and the arguments of the parties and being fully advised in the premises and being satisfied that the position of Administrative Assistant-Counselor is neither supervisory nor confidential makes and issues the following

ORDER

That the position Administrative Assistant-Counselor is included in the collective bargaining unit of non-supervisory certificated teaching personnel employed by the Board of Education, City of Green Bay.

Given under our hands and seal at the
City of Madison, Wisconsin, this 14th
day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slayney, Chairman

Zel S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

The Green Bay Board of Education on July 21, 1972 petitioned the Wisconsin Employment Relations Commission to determine whether a newly created position of Administrative Assistant-Counselor should be excluded as supervisory and/or confidential from a voluntarily recognized bargaining unit of non-supervisory certificated teaching personnel which includes unit leaders, department chairmen, social workers, speech therapists, psychologists, librarians, Teachers Homebound, guidance counselors and special education teachers as well as classroom teachers. The Green Bay Education Association is the voluntarily recognized collective bargaining agent for said unit, opposed the petition at a hearing held August 24, 1972 at the Brown County Courthouse, Green Bay, Wisconsin. A transcript of the proceedings was made and the parties were afforded an opportunity to file post-hearing briefs.

Petitioner's Position

The Petitioner contends that the newly created position is primarily "administrative" and will encompass substantial supervisory and confidential responsibilities particularly in evaluating the performance of certified and non-certified personnel and recommending employment or dismissal of such personnel.

Association Position

The Association contends that the Administrative Assistant-Counselors' participation in the evaluation procedure is no different than that currently exercised by department chairmen who are members of the bargaining unit, and that any recommendations which might be made by them are not "effective" within the meaning of the Act. Further it is pointed out that the basic functions of the new position involve pupil accounting procedures and counseling activities which are in no sense supervisory functions.

The Association also contends that the new position cannot be considered confidential inasmuch as it does not entail access to information that is confidential as that term is used in labor relations.

Discussion

The responsibilities of the proposed Administrative Assistant-Counselor position as proposed by the Petitioner are as follows:

"POSITION RESPONSIBILITIES

AS DIRECTED:

1. Is responsible for those assigned pupil accounting procedures.
2. Evaluates certified and non-certified personnel and submits written recommendations related to their performance and employment or dismissal to the building principal.

3. Correlates those administrative functions as related to guidance and pupil accounting -- including chairmanship of the guidance department.
4. Coordinates K-12 career (vocational, et al.) program within the building.
5. Maintains or develops necessary pupil accounting records or reports.
6. Assists in developing master schedules in solving schedule conflicts and in grade reporting.
7. When appropriate, recommends employment of certified and non-certified personnel to fill vacancies or newly created positions.
8. Develops inventories, budgets and budgeting procedures for guidance.
9. Correlates school programs for homebound and those students requiring special programming.
10. Maintains security of the building.
11. Correlates special building and/or program requests such as clinics, university courses, and mini courses.
12. Makes parental contact as required.
13. Makes necessary classroom visits in the solution of individual problems.
14. Develops and maintains necessary student handbooks.
15. Assists in the development of long range educational goals and/or programs.
16. Performs other duties as delegated by the principal or the Superintendent of Schools." 1/

The Petitioner operates eight secondary schools (four Junior High and four Senior High) which are staffed by approximately 500 teachers and have approximately 10,500 students enrolled. The Petitioner anticipates that four of the eight schools will initially have the new position added to their staff. (Preble High School, West High School, Edison High School and Washington Junior High School) Presently these schools have an administrative staff consisting of a principal and an assistant principal. Although the situation varies somewhat from school to school the duties outlined above have heretofore either not been performed or have been performed by the assistant principal and various members of the teaching staff.

At the hearing the Petitioner emphasized those aspects of the new position which encompass duties previously performed by the assistant

1/ Petitioner's Exhibit #1. The responsibilities of the Administrative Assistant-Counselor position as originally proposed did not include Items #2 and 7, which items were added by the Petitioner sometime after a meeting with the Association in March 1972 and before the hearing herein.

principal and those duties which are alleged to be of a supervisory or confidential nature in support of its position. Conversely the Association emphasized those duties presently performed by employees of the bargaining unit which it represents in support of its contention that the position is neither supervisory nor confidential. The Commission is satisfied that the decision in this case does not turn on the question of whether the new position as proposed "takes work away from bargaining unit personnel", but rather whether the duties to be performed by the occupants of the new position are sufficiently supervisory or confidential in nature so as to require their exclusion from the voluntarily recognized bargaining unit.

As noted in Item #3 the Administrative Assistant-Counselor will engage in counseling activities and will act as chairman of the guidance department. It is anticipated that this aspect of the job will require approximately 40 per cent of the occupant's time. In this respect the position is no different than that of other department and unit chairmen who are included in the bargaining unit. The next greatest proportion of the occupant's time will be spent in handling pupil accounting procedures. Although the Petitioner maintains that it is anticipated that this function will only account for approximately 12 to 15 per cent of the occupant's time, the Commission must agree with the Association that this estimate appears to be unrealistically low in view of the amount of time currently spent by Assistant Principals and teaching personnel in performing this function unless the Administrative Assistant-Counselor is given substantial help in performing this function.

The Commission does not view either of these activities which account for a minimum of 52 per cent to 55 per cent of the occupant's time, to be of a supervisory or confidential nature. In fact these activities, which are related, indicate that the occupant of the new position will be predominantly a counselor with particular emphasis on problems of attendance. Because this activity is directly in support of the educational program it cannot be said that this is primarily an administrative position and the position ought to be included in the existing bargaining unit of teaching and supportive personnel, unless it can be said that there are sufficient duties of a supervisory or confidential nature so as to require exclusion of the position from any bargaining unit.

The only duties which appear to be supervisory in nature are those numbered 2 and 7. According to the evidence the degree of participation in the evaluation procedure will depend upon the desires of the principal at the particular school involved. If the Principal chooses to use a "team approach" the Administrative Assistant-Counselor would be expected to help evaluate any teachers whom the principal designates. On the other hand if the Principal determines that the Administrative Assistant-Counselor ought to limit his participation in the evaluation process to certain departments such as the guidance department he may do so. In either event the participation of the Administrative Assistant-Counselor in the evaluation processes will merely amount to his providing the Principal with written or oral evaluations for the Principal's use in making formal written evaluations of the teacher involved. The evaluations of the Administrative Assistant-Counselor, like the evaluations given by department and unit chairmen, would be given little or no effective consideration if the Principal did not concur in the content of those evaluations. On the other hand written evaluations in which the Principal concurs would be "effective"

within the meaning of Section 111.70(1)(o)1 in terms of any recommendations he might have with regard to the teacher being evaluated. The Commission is satisfied that this input into the evaluation procedure is not sufficient in itself to support the finding that the employee is a supervisor as that term is used in labor relations.

Similarly the Commission is satisfied that the Administrative Assistant-Counselor's knowledge of the content or possible content of written evaluations for a short period of time before those evaluations are formally rendered and made available to the teacher involved is not sufficient to make said employees confidential employees as the term is used in labor relations.


The Administrative Assistant-Counselor's participation in the hiring process is limited to participation in a panel comprised of administrators and teachers who interview prospective applicants and make recommendations. This process which might be described as "collegial" does not make all of the participants supervisors merely because the collective judgement of such a panel may be taken as an effective recommendation. An employer could by this argument effectively deprive all employees of bargaining rights because of their participation in such hiring practices which are common in educational institutions.


The Commission therefore concludes that the duties proposed for the position of Administrative Assistant-Counselor are not sufficiently supervisory or confidential in nature so as to require the exclusion of the occupants of that position from the voluntarily recognized bargaining unit of teaching and supportive personnel.

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