

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WATERTOWN TEACHERS EDUCATION  
ASSOCIATION,

Complainant,

vs.

WATERTOWN UNIFIED SCHOOL DISTRICT #1,

Respondent.

Case VIII

No. 18049 MP-377

Decision No. 12816-A

Appearances:

Mr. Wayne Schwartzman, Staff Counsel, WEAC, appearing on behalf of  
the Complainant.

Davis, Kuelthau, Vergeront, Stover & Leichtfuss, Attorneys at Law,  
by Mr. John P. Savage, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Watertown Teachers Education Association, herein referred to as Complainant, having filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission on June 17, 1974 alleging that Watertown Unified School District #1, herein referred to as Respondent, had committed prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes; and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing thereon having been held at Watertown, Wisconsin, on August 20, 1974; and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Complainant, Watertown Teachers Education Association, is a labor organization with offices at 1325 Western Avenue, Watertown, Wisconsin.

2. That Respondent, Watertown Unified School District #1, is a municipal employer operating public schools with offices at 415 South Eighth Street, Watertown, Wisconsin.

3. That at all relevant times, Complainant has been the certified representative of certain of Respondent's professional teaching personnel and that in that regard Complainant and Respondent have been party to a collective bargaining agreement for the period of August 27, 1973 to August 23, 1975 providing in relevant part:

"ARTICLE II - RECOGNITION

. . .

10. 12816-A

WHEREAS, the aforementioned WERC instrument certified that the Watertown Teachers' Education Association had been selected by majority of the eligible employees, consisting of all regular full-time and regular part-time certificated personnel employed by the Unified School District, City of Watertown, et al., including librarians, guidance personnel, speech therapist, summer school teachers, but excluding superintendent, supervisors, principals, dental hygienist and substitute teachers, as their representative, and unless otherwise indicated, employees in this unit will be hereinafter referred to as 'teachers'.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Education recognizes the WTEA to be the sole bargaining agent for all eligible employees whether under contract to be employed or employed by the Board.

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#### ARTICLE VIII

#### PERSONNEL ASSIGNMENTS AND RELATED POLICIES

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#### D. Evaluation

1. The evaluation of staff members can be of significant aid in improving the quality of their performance by making the teachers aware of their strengths and weakness.
2. All teachers employed by the Board, who have qualified and obtained from the Wisconsin Department of Public Instruction, an unlimited teaching license, shall receive a minimum of one 'Teaching Evaluation Report' every three years. Teachers who are licensed by the Department of Public Instruction with an Initial Certification (3 year license) shall receive a minimum of one 'Teaching Evaluation Report' every year.
3. Teachers shall be given a copy of the 'Teaching Evaluation Report' prepared by their supervisors, and shall have the right to discuss such report with their supervisor before it is submitted to the central administration or put into the teacher's personal file.
4. Reasonable assistance shall be provided to teachers upon recognition of the teacher experiencing 'professional difficulties.' For the purpose of this article, 'professional difficulty' shall apply to deficiencies observed in classroom management, instructional skill, or other difficulty.
5. The supervisor and staff member shall each receive a copy of the written evaluation report, signed by all parties concerned, prior to the report being placed in the teacher's file. The staff member's signature does not necessarily indicate agreement with the evaluation. No teacher shall be asked or required to sign a blank or incomplete evaluation form.
6. A teacher may request and shall be furnished with information from his central office files. Information of a confidential nature will not be available to teachers."

4. That at all relevant times prior to April 23, 1974, Respondent has employed an individual in the position of Assistant Principal of its Concord School and an individual as the Assistant Principal of its Lebanon School.

5. That by decision number 12166-A, dated March 25, 1974, the Wisconsin Employment Relations Commission determined that the aforementioned positions were positions for employees within the meaning of the Municipal Employment Relations Act.

6. That by letter dated April 22, 1974 and received by Respondent, Complainant, by its agent, requested that Respondent bargain with respect to the wages, hours and conditions of employment of said positions.

7. That on April 23, 1974 Respondent adopted the following job description in relevant part and changed the title to the aforementioned positions to Principal:

"Position Title - Elementary School Principal

Purpose of Position - To plan, organize, coordinate, direct and evaluate the total school program and all full and part time certificated employees assigned thereto; and to perform any other district-level supervisor and/or administrative duties assigned by the Superintendent of Schools.

Principal Duties:

1. Develop and maintain a positive community relations program.
2. Make final recommendation of all full time certificated personnel serving the school.
3. Provide all required supervision of personnel and conduct personnel evaluations as per school district policies and its Master Agreement with the WTEA.
4. Complete and file all required school district and state reports.
5. Plan, prepare and monitor the school's budget relative to supplies, services and programs.
6. Provide educational leadership to all aspects of the curriculum.
7. Serve as a member of the administrative cabinet with other district management personnel.
8. Direct and monitor the implementation of all School Board Policies and administrative regulations.
9. Assist in the coordination and scheduling of all special teachers assigned to serve the school.
10. Perform such other district-wide management services as may be assigned by the Superintendent.
11. Make provisions for and evaluate the performance of substitute teachers.

Principal Relationships:

1. Will serve in a line position responsible directly to the Superintendent.
2. Direct the work of all persons assigned to the school while they are in school.
3. Consults with the Assistant Superintendent for Business Affairs in the development of the budget.
4. Consults with the Assistant Superintendent of Instruction for advice and assistance, and renders advice and support to him.
5. Carries the delegated authority of the Superintendent in the performance of any specifically assigned administrative task which is district-wide in nature.

Preparation, Experience, Skills:

1. Master's Degree, including the ability to meet appropriate State Certification requirements for elementary principals.
2. Demonstrated ability to plan, direct, and coordinate the work of a professional and classified staff.
3. Demonstrated ability to apply creative thinking and sound reasoning to problems and challenges associated with the position.
4. Demonstrated ability to understand the implications of social, political, educational, and economic changes and the significance they hold of the position of elementary principal.
5. Demonstrated ability to apply research findings to pertinent areas of curriculum and management.
6. Demonstrated ability to apply conceptual, technical, and human skills to the elementary principalship.
7. Demonstrated ability to motivate staff to cooperate voluntarily in attaining organizational [sic] aims.

Terms of Contract:

Length: 40 weeks (One week before and one week after school year)

Released Time from Teaching: Approximately one day per week during the school year.

Classroom Teaching Assignment: As per annual contract.

Salary and Fringe Benefits: As per negotiated agreement between the Board of Education and the School District Principals."

8. That at all relevant times, each of the aforementioned Principals spends approximately 37 to 50 percent of her time performing non-teaching administrative duties and spends the remainder of her time teaching; that as a small part of the administrative time each participates in the interview and selection process leading to the hiring of non-professional employees, each is the sole person to call to Respondent's attention disciplinary problems with respect to professional teaching employees in the

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aforementioned bargaining unit at her school; and that each, among others, calls disciplinary problems with respect to non-teaching employees to the attention of Respondent but that others of Respondent's agents independently determine what, if any, action should be taken.

9. That by letter dated May 1, 1974 received by Complainant and at all relevant times thereafter Respondent has refused to bargain with respect to the wages, hours and conditions of employment of said positions.

On the basis of the above and foregoing Findings of Fact, the Examiner makes and files the following

#### CONCLUSIONS OF LAW

1. That the positions of Principal at Concord School and at Lebanon School both in the employ of Watertown Unified School District #1 are neither supervisory nor confidential within the meaning of the Municipal Employment Relations Act and, therefore, are positions for municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That at least since May 1, 1974 Respondent Watertown Unified School District #1 has neglected and refused to bargain with respect to the wages, hours and working conditions of its Principal of Concord School and its Principal of Lebanon School in violation of Section 111.70(3)(a)4 of the Municipal Employment Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and files the following

#### ORDER

IT IS ORDERED that the Respondent, Watertown Unified School District #1, its officers and agents, shall immediately:

1. Cease and desist from refusing to bargain collectively with the Watertown Teachers Education Association concerning the wages, hours and conditions of employment of both the Principal of Concord School and the Principal of Lebanon School.
2. Take the following affirmative action which the Examiner has determined will effectuate the policies of the Municipal Employment Relations Act:
  - (a) Upon request, bargain collectively with the Watertown Teachers Education Association as the exclusive representative of all of the employees in the aforesaid appropriate unit, with respect to the wages, hours and conditions of employment of both the Principal of Lebanon School and the Principal of Concord School.
  - (b) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps have been taken to comply herewith.

Dated at Milwaukee, Wisconsin this 18<sup>th</sup> day of September, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

In Watertown Unified School District #1 (12166-A), March 25, 1974, the Commission found that the teaching principal positions, then denominated Assistant Principal, at Concord and Lebanon Schools, were not supervisory or confidential and included them in Complainant's unit of professional educators. By letter dated April 22, 1974, Complainant demanded that Respondent bargain with respect to the two positions. However, on April 23, 1974 Respondent adopted a new job description for the positions by which it changed their title to Principal, incorporated authority changes claimed to have occurred to that date and made further changes. 1/ It admittedly refused to bargain with respect thereto on May 1, 1974.

Respondent raised the affirmative defenses to the instant refusal-to-bargain complaint that these positions are now supervisory and/or confidential within the meaning of the Municipal Employment Relations Act. 2/ It contends that since the October 25, 1973 hearing, the positions have undergone a "maturing" process by which they have gained the authority to effectively recommend the hire, transfer, suspension, discharge and assignment of other employees as well as access to confidential employment records and collective bargaining information, similar to that of the voluntarily excluded full-time principals. 3/ It further contends that all circumstantial factors, besides their teaching duties, establish that the teaching principals are supervisory.

Although Complainant has contended that the positions are not supervisory or confidential, it has raised no argument with respect to the previous determination or the unilateral changes. 4/

ACCREDITED BACKGROUND:

Georgeann Casper is the teaching Principal of Lebanon School while Judith Kaufman was the Principal of Concord School for the 1973-1974 school year. 5/ Each teaching Principal is responsible for a school staffed by three other teachers, a secretary, a part-time custodian and a food service worker. Each school also receives the services of itinerant music, art, etc., teachers.

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- 1/ That description appears at Finding of Fact 7.
  - 2/ All citations are to Wis. Rev. Stats. (1973) unless otherwise noted.
  - 3/ Joint School District #1, City of Watertown, et al. (7101) 4/65;  
Article II of the parties' 1973-1975 collective bargaining agreement.
  - 4/ Complainant did object to the admission of evidence of circumstances occurring from October 25, 1973 to March 25, 1974. However, it raised no claim that the previous determination is res judicata as to the affirmative defense. The Examiner admits that evidence for the purpose of establishing the effect of the changes that occurred April 25, 1974, including those asserted to have accrued to that date.
  - 5/ That position is now vacant. Respondent has attempted to hire a replacement.

In addition to ordinary instruction, teaching Principals perform "administrative work" predominantly consisting of: communications with parents on behalf of the school district with respect to incidents and matters of concern occurring at the school; attending administrative meetings; participation in budget preparation, purchase approval, development of in-service program; and making weekly reports. 6/ A minute part of the time devoted to that function is spent on the supervisory aspects discussed below.

Each teaches the normal number of classes minus one-half to one day per week during which substitutes take their classes. Unlike other teachers, they spend the time available before, after and during the normal school day on administrative work rather than preparation for instruction. It appears that they also remain at school more hours than other teachers. As a result, a substantial amount of class preparation must be done at home in addition to that which other teachers ordinarily do at home. Kaufman and Casper's testimony suggests that they average approximately two and one-half hours immediately before, after and during their scheduled eight-hour school-year day in administrative work. Each spends the two days devoted to teachers' convention and two weeks performing administrative work in addition to the 190-day school year. 7/

Respondent unilaterally negotiated with respect to these positions with the Watertown Association of School Administrators, the representative of supervisory and managerial employees. Although in other respects the conditions of employment and benefits are similar to those enjoyed by Principals, the teaching Principals were paid at the teacher contract rate plus \$1,000 for the 1973-1974 school year. Using the teacher salary schedule, it is apparent that the \$1,000 does not compensate the teaching Principals at the teacher rate for the extra time required. For successive years, teaching Principals are to be paid in accordance with an outside consulting firm's evaluation of their positions. No credible evidence was presented to establish that the result would be different thereunder.

At the time of the October 25, 1973 hearing, Respondent required that the then Assistant Principals meet the Wisconsin Department of Public Instruction's requirements for certification as an elementary school principal in schools with six to ten teachers within two years as follows:

1. United States citizenship
2. eligibility for certification as an elementary school teacher in Wisconsin
3. a bachelor's degree
4. a graduate course in the administration of schools

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6/ Respondent has not asserted, nor does the Examiner find, that the work described is "managerial" within the meaning of Section 111.70(1)(b).

7/ Including the time beyond the normal school year, it appears that 37 percent of the 200 workdays themselves is spent in administrative work. This ignores evening work in both the numerator and denominator. The 45 to 50 percent (of total time worked) figure appears to be in error unless at least two hours of evening time plus an amount of time equal to that spent in actual class preparation at home is used for administrative work.

5. two years of elementary school teaching

The April 25, 1974 job description specifies a master's degree and the above requirements among others. However, in soliciting applicants for the position vacated by Kaufman, Respondent mailed a June 10, 1974 notice specifying only a bachelor's degree and the aforementioned requirements. The Examiner concludes that the requirements are the same as before except that they must be possessed immediately upon employment instead of within two years.

SUPERVISORY STATUS:

Section 111.70(1)(o)1 defines "supervisor" in relevant part 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 judgement."

In Fond du Lac County (Rolling Meadows Home) (10579-A) 1/72 at p. 5, the Commission stated the essential test under that statute:

"The essential question remains the same and that is, whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors."

In the context of the record as a whole, the Commission has emphasized the following factors as evidence of the existence of the statutory criteria and as evidence of whether the statutory authority is sufficient to warrant the conclusion that the individual is a supervisor: 8/

1. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
2. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
3. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
4. His authority to responsibly direct fellow employees and the amount of independent judgment and discretion used in connection with the exercise thereof.

Hire:

The evidence of actual participation in hiring situations establishes that, unlike full-time principals, the teaching principals have a minimum participation in the effective recommendation of the

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8/ Fond du Lac County (Rolling Meadows Home), supra; Oneida County (9134-A) and (12247) 11/73; City of Lake Mills (9516-B) 1/75.



hire of fellow employees. In November, 1973, after the hearing in the prior proceeding, the secretarial position at Lebanon School was vacated. Bruce, the full-time Principal, then assigned to oversee Casper's activities, notified administrative personnel that the position was vacant. Apparently, they placed an advertisement in the local newspaper specifying the initial wage rate for the position. Both Casper and Bruce received letters from applicants. Despite Casper's implication to the contrary, each selected applicants for interview as he or she desired. Bruce informed supervising administrative personnel of the status of interviews, and they authorized the closing of interviews. After Bruce and Casper jointly conducted the interviews, Bruce narrowed the list of interviewees and permitted Casper to choose the person to be hired from the narrowed list. Bruce notified the supervising administrators and obtained their approval to hire. Bruce authorized Casper to notify the applicant that she was hired.

At the end of the 1973-1974 school year, after the change in job description, the secretary at Concord School took a leave of absence (illness) for the remainder of the semester. Teaching Principal Kaufman called Superintendent Mrdjenovich that weekend and told him that she needed a temporary replacement immediately. He directed her to talk to Richards, Personnel Director for Respondent. She then told Richards that she knew of some local people who might take the job. With Richard's approval, she contacted the local people, who declined the job. She then contacted the state employment service on the following Monday, who referred only one applicant. Kaufman interviewed that applicant and provided information in addition to the employment application to Richards. Thereafter she met with him and told him that she would like to hire the applicant. Richards, who unquestionably had the authority to effectively recommend the hiring, stated that he would accept her recommendation. Thereafter, the applicant was hired with the express understanding that she was a temporary employee. The permanent employee returned from leave at the beginning of the next school year. Mrdjenovich, at page 73 of the transcript, testified that this was not a typical example of Kaufman's authority because the urgent need warranted the delegation of the aforementioned authority. He also testified that principals have never been required to take an employee they did not want.

The evidence also reveals that the teaching principals hire substitute teachers solely from lists prepared by others. They make notes as to those who will come to the rural schools. They may decide not to call a substitute who appears undesirable although there is no evidence that this authority is actually exercised.

The Examiner concludes that Bruce exercised the authority to effectively recommend the hire of an employee under the circumstances of the first situation because he determined those who would be interviewed (although Casper added some), interviewed the applicants, eliminated those that he did not consider acceptable and permitted Casper the choice from the remainder. On the other hand, the evidence does not sustain the conclusion that having participated in the interviews and chosen from the list of approved applicants Casper exercised independent discretion to effectively recommend the hire of the chosen employee. In the latter situation, Richards accepted Kaufman's recommendation of a casual employee because of the urgency of the situation, only after he had certain unspecified information. The Examiner is satisfied by a clear and unsatisfactory preponderance of the evidence that, unlike full-time principals, teaching principals have a minimal participation in other administrators' effective recommendations of the hire of non-professional employees. 9/

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9/ Wausau School District No. 1, City of Wausau, et al. (10371 A) Secondary Head Librarian, p. 12, High School Dept. Chairmen, p. 14.

### Assignment and Layoff:

The parties' collective bargaining agreement establishes the basic working hours and conditions for teachers. <sup>10/</sup> While principals may recommend additional hours for non-professional employees, independent determination is made by administrative personnel to determine the need and allocation thereof. The Examiner is satisfied that any authority to assign or lay off is merely clerical.

### Discharge, Discipline and Transfer:

Teaching principals do not have authority to effectively recommend the discharge, discipline and transfer of fellow employees. At Lebanon School, Casper recommended during the early part of 1974 that the janitor be replaced. Supervisor of Building and Grounds Werschneg, who supervises custodial and maintenance employees, met with the employee and then with his supervisor, Assistant Superintendent of Business Services Twesne, and Casper. The three agreed to accept Werschneg's recommendation that the janitor be kept. After the end of the school year, Werschneg alone determined that the janitor should not be offered another individual employment contract for the next school year. He notified the janitor himself. It is clear that Werschneg, and not Casper, had the authority to effectively recommend the discharge of an employee.

At Concord School, Kaufman contacted Mrdjenovich because she felt that a non-teaching employee was better suited to work elsewhere. She recommended that it might have strong benefits for the school if that employee were made aware of a vacant position at another school. Mrdjenovich decided that the appropriate action was to inform the employee of the position but not require the transfer.

Teaching principals also prepare evaluations of unit personnel under their direction, which ". . . are designed to give positive feedback to teachers in the performance of the job for which they were hired." <sup>11/</sup> Principals evaluate newly certified teachers once every year for the first three years, probationary teachers once per year for the first two years and non-probationary teachers once every third year. <sup>12/</sup> In order to make the evaluation, the principal observes the teacher in the classroom and writes the evaluation, discussing the prepared evaluation with the teacher. Evaluations recommending non-renewal for performance or long-term disciplinary problems result in a higher authority's immediate independent investigation and determination of appropriate action.

Although the teaching principals are the only employees at the instant locations to identify to management possible disciplinary problems, <sup>13/</sup> the Examiner is satisfied that in view of the lack of their responsible direction of employees, the professional nature of certain employees supervised and the number, responsibility and duties of other supervisors over non-professional employees at each school, that teaching principals'

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<sup>10/</sup> Article VII.

<sup>11/</sup> Mrdjenovich, transcript at p. 75.

<sup>12/</sup> Article VIII, Section C.

<sup>13/</sup> Outagamie County (11789-A) pp. 2-3, 7/73; Handicapped Children's Education Board-Robert Plamann School and Outagamie County (13390) p. 3, 2/75; St. Croix County (Highway Dept.) (11251) 8/72; Milwaukee Board of School Directors (13787) 7/75.

authority to effectively recommend the discharge, transfer or discipline of fellow employees is of a merely routine nature.

Conclusion:

The Examiner is satisfied from the clear and satisfactory preponderance of the evidence that teaching principals participate in the effective recommendation of the hire of employees other than professional educators, and have no other supervisory authority. On the basis of the record as a whole, the Examiner is satisfied that this is not sufficient authority to make the teaching principals supervisors within the meaning of the Municipal Employment Relations Act.

CONFIDENTIAL STATUS:

The evidence establishes that the teaching principals might be appointed by the Watertown Association of Administrators to Respondent's bargaining team should they be excluded from the teacher unit. In any case, the chosen representative will report the status of negotiations to principals. The teaching principals also participate in monthly administrative meetings more than they did prior to October 25, 1973. At these meetings, the status of negotiations may be discussed; principals identify contract interpretation problems that have arisen or otherwise been identified to them; and central office administrators instruct them as to the uniform policy to be adopted with respect thereto. In preparing evaluations of the three teachers under their control, principals have access to employment records of the evaluated teacher. Kaufman testified at page 27 of the transcript that she had used this access to determine who was to be evaluated and other unspecified uses. 14/

The Examiner is not satisfied that the above information is confidential from Complainant in that it is all either known or intended to be known to it. However, even if the teaching principals have access to the confidential portion of the three teachers' files once every three years for each teacher, the Examiner is satisfied that that access is not likely to result in the conflict of interest between teaching principals and Complainant that the statute was intended to prevent. 15/ Thus, principals are appropriately included in Complainant's unit, and Respondent has violated Section 111.70 (3)(a)4 by refusing to bargain with respect thereto.

Dated at Milwaukee, Wisconsin this 18<sup>th</sup> day of September, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II, Examiner

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14/ Non-confidential parts of these files are available to the individual teacher, Article VII, Section D 6 of the parties' collective bargaining agreement. Testimony indicates that the files may also be available to Complainant, but does not establish that Complainant has access to any parts that are not available to the teacher himself.

15/ Board of Area, Vocational, Technical and Adult Education, District No. 7 (9188) 8/69; County of Milwaukee (11382-D) p. 10, 9/74; Cudahy Board of Education, (12087) p. 3, 9/73