

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
NORTHWEST UNITED EDUCATORS :
Involving Certain Employes of : Case III
NEW AUBURN JOINT SCHOOL DISTRICT : No. 18006 ME-1070
NO. 11 : Decision No. 13068

Appearances:

Mr. Frank Burdick, Organizational Specialist, Wisconsin Education Association Council, and Ms. Gloria Geurts, NUE Representative, appearing on behalf of Northwest United Educators.
Losby, Howard, Riley & Farr, S.C., Attorneys at Law, by Mr. Stevens L. Riley, and Superintendent William D. Rogers, appearing on behalf of the Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT
AND MODIFYING CERTIFICATION

Northwest United Educators having requested the Wisconsin Employment Relations Commission to issue an order clarifying the following certified bargaining unit description by determining whether the position of Guidance Counselor should be included therein:

"all full-time employees of the district engaged in teaching including classroom teachers and librarians (all hereinafter referred to as teachers) but excluding the following:

1. Administrators.
2. Principals, Supervisors and Department Heads having evaluation responsibilities over other staff members.
3. Non-Instructional personnel such as nurses, instructional aides, social workers and psychologists.
4. Office, Clerical, Maintenance, Lunch and Transportation personnel.";

and the Commission, pursuant to notice, having conducted a hearing in the matter on July 12, 1974, at New Auburn, Wisconsin; Marshall L. Gratz, Hearing Officer, being present; and the Commission, having considered the record and briefs of the parties, and being fully advised in the premises makes and issues the following

ORDER

IT IS ORDERED that the position of Guidance Counselor be, and the same hereby is, included in the collective bargaining unit described above;

No. 13068

AND IT IS FURTHER ORDERED that the parties' existing certification dated August 7, 1973 shall be, and hereby is, amended so that the bargaining unit described therein shall consist of

"all full-time employees of the district engaged in teaching including classroom teachers, librarians and Guidance Counselor (all hereinafter referred to as teachers) but excluding the following:

1. Administrators.
2. Principals, Supervisors and Department Heads having evaluation responsibilities over other staff members.
3. Non-Instructional personnel such as nurses, instructional aides, social workers and psychologists.
4. Office, Clerical, Maintenance, Lunch and Transportation personnel."

Given under our hands and seal at the City of Madison, Wisconsin this 3rd day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING
UNIT AND MODIFYING CERTIFICATION

Following an election conducted by it, the Commission, on August 7, 1973 certified Northwest United Educators as the representative of

"all full-time employees of the [New Auburn Joint School] district [No. 11] engaged in teaching including classroom teachers and librarians (all hereinafter referred to as teachers) but excluding the following:

1. Administrators.
2. Principals, Supervisors and Department Heads having evaluation responsibilities over other staff members.
3. Non-Instructional Personnel such as nurses, instructional aides, social workers and psychologists.
4. Office, Clerical, Maintenance, Lunch and Transportation personnel." 1/

The parties' initial collective bargaining agreement, referred to herein as the Agreement, was effective between July 1, 1973 and June 30, 1974. In Article I (Recognition) the District recognized NUE as the exclusive and sole bargaining representatives on wages, hours and conditions of employment with respect to the above-noted unit set forth in the certification. That Article further provided as follows:

"(The parties have agreed to jointly petition the W.E.R.C. for a determination of the issue whether the Guidance Counselor should be included in the above-described bargaining unit.)"

The instant petition was filed pursuant to said Agreement.

The District, contrary to NUE, contends that Dan Wanish, the single Guidance Counselor presently in its employ

- (1) is managerial or otherwise so closely allied with management, so as to warrant his exclusion from the bargaining unit; or, in the alternative,
- (2) lacks a community of interest with the employees in the above-described unit and therefore should not be included therein since, as was true of the school psychologists excluded from the teachers' unit in Whitefish Bay Public Schools, Dec. No. 10799 (2/72), ". . . the functional and professional differences . . ." between Wanish' position and teachers' would make

1/ Dec. No. 11972.

it appropriate to place him in a professional unit separate from that of the teachers.

The District operates a K-12 system within one building. Wanish spends 50 percent of his time in "direct student contact", i.e., in one-to-one, or small group counseling, or in classroom teaching. Wanish holds a teaching certificate and teaches a one-hour per day career planning class during the first trimester (2 1/2 month period of the school year), a two-hour per day psychology class during the second trimester, and does not teach any class during the third trimester. He spends 30 percent of his average day on parent conferences, record keeping and class scheduling activities. The remaining 20 percent of his time is spent (1) in meetings of a multi-disciplinary team (MDT) which evaluates the needs of handicapped children in the District and prescribes remedial programs within and without the school property, and (2) in monitoring the implementation of such programs through conferences with students, teachers, outside helping agencies, parents, the officers of the District assisting professionals and others. Though no such situation has as yet arisen, Wanish' monitoring function would require him to take steps to correct situations in which a teacher fails to conduct a class in a manner conducive to achievement of general or specific needs of a child whom he has counseled.

Though he does not consider himself a part of management, Wanish meets with the Superintendent and the Principal/Assistant Superintendent frequently, and occasionally with the Board. In such meetings, he responds to questions concerning his areas of responsibility and expertise, one of which is compliance with Chapter 89, Wis. Stats., requiring as of school year 1973-1974 that each district provide remedial programs for every handicapped person aged 3-21 in the district. Wanish also prepares a proposed budget with respect to curriculum development, but the Superintendent has overall budget preparation responsibility. On the five or so days per year on which the Superintendent and the Principal/Assistant Superintendent are away from the building, Wanish is the person in charge.

Wanish' terms and conditions of employment differ in several respects from those of teachers and librarians. For example, he is under fewer restrictions as to leaving the building, he is not evaluated in the same manner, his individual contract is for 200 days as opposed to 190, and he, along with the Superintendent and the Principal/Assistant Superintendent bargain with the Board as a group with respect to their salaries, benefits, conditions of employment, etc.

We note, however, that Wanish does not purchase significant portions of the District's supplies, nor pledge the Municipal Employer's credit. Considering all of the foregoing, we find that it cannot be said that Wanish is sufficiently closely aligned with management so as to warrant his exclusion as managerial.

The Commission has previously indicated its intention to include, in a unit consisting primarily of classroom teachers, those who do not engage in classroom teaching, but who possess teaching certificates, evidencing a background in education, and who work with students or teachers in a nonsupervisory capacity in support of the educational program. 2/ Notwithstanding the modification in Wanish' role brought about by the advent of Chapter 89 responsibilities, and without also

2/ Janesville Board of Education, (6678) 3/64; Appleton Joint School District No. 10 (7151) 5/65; Whitefish Bay Public Schools (10799) 2/72.

considering the extent to which Wanish performs classroom teaching, the application of that Commission policy would call for Wanish' inclusion in the existing professional unit herein. Wanish' classroom teaching and possession of a teaching certificate make inapplicable hereto the psychologists' result in Whitefish Bay Public Schools above, cited by the District.

Thus, we conclude that the Guidance Counselor position properly is included in the existing professional unit, and we have ordered that the Certification be amended to reflect that inclusion. By so doing, it is not our intent to establish the wages, hours and other conditions of employment of the Guidance Counselor position, but rather such matters are for collective bargaining between the parties.

Dated at Madison, Wisconsin this 3rd day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner