

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

SUPERIOR FEDERATION OF TEACHERS, :
LOCAL NO. 202, AFT, AFL-CIO :

For Clarification of a Bargaining :
Unit Consisting of Certain Employees of :

JOINT CITY SCHOOL DISTRICT NO. 1 :
CITY OF SUPERIOR, ET AL :

Case XXXII
No. 18628 ME-1140
Decision No. 13238-A

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Appearances:

Mr. William A. Kalin, Director of Organization, Wisconsin Federation
of Teachers, for the Petitioner.

Mr. J. Patrick McCoshen, Chairman, Personnel Committee, Superior
Board of Education, for the Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT

Superior Federation of Teachers, Local No. 202, AFT, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission to determine whether the positions of Homebound Teacher, Speech Therapist, School Nurse, School Psychologist, and Community Potential Project professional personnel should be included or excluded from an existing unit consisting of certified classroom teachers in the employ of Joint City School District No. 1, City of Superior, et al; 1/ and a hearing having been held in the matter at Superior, Wisconsin on June 25, 1975, Sherwood Malamud, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

ORDER

That all regular full-time and regular part-time professional employees in the employ of Joint City School District No. 1, City of Superior, et al, who are employed as professionals working with students and teachers, whether certified, or not certified, by the Department of Public Instruction shall be, and hereby are, included in the unit consisting of all regular full-time and regular part-time certified classroom teachers in the employ of said School District; and therefore the existing collective bargaining unit, presently represented by Superior Federation of Teachers, Local No. 202, AFT, AFL-CIO, is hereby amended to read as follows:

"All regular full-time and regular part-time certified classroom teachers, as well as all professional employees who are employed as professionals working with students and teachers, including, but not limited to, full-time Guidance


1/ In April, 1964 the Petitioner was certified as the exclusive bargaining representative for all full-time and regular part-time certified classroom teachers of said District, including full-time Guidance Counselors and Special Teachers, but excluding substitute teachers, administrative and supervisory personnel. (6719)

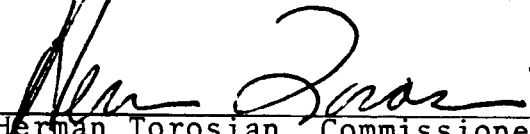
Counselors, Special Teachers, Homebound Teachers, Speech Therapists, School Nurses, School Psychologists, and Community Potential Project Assistant Coordinator, in the employ of Joint City School District No. 1, City of Superior, et al, excluding substitute teachers, administrative and supervisory personnel."

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

In its petition, Petitioner seeks to include the following positions in the certified unit; the Homebound Teacher, the Speech Therapist, the School Nurse, the Community Potential Project personnel, and the School Psychologist.

During the course of the hearing, the Petitioner and the District stipulated to the inclusion of the Homebound Teacher, and the Speech Therapist positions in the existing unit. The parties could not agree whether the School Nurse, Community Potential Project Director and Assistant Coordinator, and the School Psychologist positions should be included or excluded from the unit.

The School Nurses

The District employs three Registered Nurses as School Nurses, one of whom is working towards obtaining certification as a School Nurse from the Department of Public Instruction. Each is assigned duties at various school buildings, pursuant to a schedule. The School Nurse commences her work at a particular school by first examining those children who claim they are ill. As a part of her responsibilities, the School Nurse participates in team planning sessions with teachers. At these planning sessions, where teachers on a particular team (which may be composed of the English, Science, Mathematics and Social Studies teachers) do their planning for the day, the Nurse receives student referrals from the teachers. The referral may entail the Nurse's examination of a child, or it may entail making a home visit where there is a problem of regular absenteeism due to a health problem.

The School Nurse also participates in the multi-disciplinary team which is composed of the principal of a school, a School Psychologist and other District employes, such as teachers and Speech Therapists, who have established contact with a particular child. The multi-disciplinary team gathers information concerning a particular child and assists the School Psychologist in determining whether a child should be placed in the District's program for exceptional children.

Community Potential Project Personnel

A Director-Coordinator, an Assistant Coordinator, several clerical employes and library assistants are employed in the Project. Petitioner seeks to accrete only the Director-Coordinator, Mr. Michael Witkin, and the Assistant Coordinator, Mr. Douglas Finn, into the above described unit. The Director and the Assistant Coordinator are responsible for implementing the project's program. The primary purpose of the project is to develop a school curriculum for K through 12, concerning the history and development of the City of Superior area.

The project Director and Assistant Coordinator have come into high school classrooms and have made presentations to encourage students to get involved in the collection of pictures and memorabilia for the project. Witkin and Finn address community groups and work with a twenty-three member Board of Directors. They recruit persons from the community to serve as consultants and specialists concerning special historic periods or subject areas. It is the Director who effectively recommends the hiring of the project's part-time assistants.

Formerly Witkin was a teacher with the District and he is on leave of absence for the duration of the project which, as of the date of the hearing, had been in existence for two years. However as of the date of the hearing, Witkin was scheduled to teach one class of English in addition to his duties as Director. After completion of the project, Witkin, the Project's Director and Coordinator, will return to the classroom as a teacher and member of the bargaining unit. Witkin was involved in the hiring process of the Assistant Coordinator. He interviewed candidates for the position and forwarded his oral recommendation to the Director of Personnel and the Superintendent for presentation to the Board of Education. However, Witkin on his own authority, hires part-time personnel, who are paid an hourly rate.

School Psychologist

Three School Psychologists, employed by the District, evaluate students for placement in the program for exceptional children. They administer various psychometric examinations to students in evaluating the students' learning functions, behavior and adjustment. They receive referrals from and consult with teachers, administrators and parents. In performing the said functions, the School Psychologist serves as a sustaining member of the multi-disciplinary team described above. When the School Psychologists are located in a particular school building they are under the supervision of the Building Principal; however, they regularly report to the Director of Special Education, who supervises the School Psychologists, Speech Therapists and Homebound Teachers.

The School Psychologists spend approximately 25% of their time administering tests to, and meeting with, students. Approximately 15% of their time is spent evaluating students to determine if they require placement in the District's program for exceptional children. The School Psychologists spend approximately 15% of their time writing reports, 5% of their time in travel, and 10% in miscellaneous activities.

The Petitioner and the District were, and are, parties to two collective bargaining agreements during the period between January 1, 1973 through December 31, 1976, wherein the School Psychologists were specifically excluded from the scope of the bargaining unit. Furthermore, Psychologists are paid two increments above the entry level for a teacher with a Masters degree.

DISCUSSION

The positions in dispute herein, namely the School Nurse, School Psychologist, and Community Potential Project Director-Coordinator and Assistant Coordinator were all created after the Commission issued its Certification of Representatives in 1964.

The District, contrary to the Petitioner, argues against accretion and asserts that although the occupants of the above positions are professional employees, they are not instructional personnel and therefore should not be included in a unit comprised of instructional personnel. The District further contends that the Community Potential Project Director-Coordinator, as well as the Assistant Coordinator are supervisors.

The record demonstrates that Witkin, the Project's Director, has the authority to hire and fire part-time personnel, and he also played a significant role in the hiring of the Assistant Coordinator. Despite

the fact that Witkin was promoted from the unit to the position of Director, 2/ the Commission is satisfied that the incumbent has supervisory authority, and therefore, he should be excluded from the above unit. The record reflects that Assistant Coordinator Finn, who is also a professional, does not exercise independent authority to hire, fire, discipline or promote any of the employees employed in the Community Potential Project. Therefore, the Commission concludes that the Assistant Coordinator is not a supervisor.


Section 111.70(4)(d)2.a. provides that the Commission may establish a single unit consisting of employees engaged in a single profession. Said Section also mandates the Commission to avoid the fragmentation of bargaining units, and permits the Commission to combine employees engaged in separate professions into a single bargaining unit. If accreted, the number of the positions involved herein will not significantly alter the size of the existing unit, nor will not, apparently, affect the representative status of the unit. In the past the Commission has included in a unit consisting of primarily classroom teachers those who do not engage in classroom teaching but who possess teaching certifications, evidencing a background in education and who work with students or teachers in a non-supervisory capacity in support of the educational program. 3/ Here the School Nurses, while not certified by the Department of Public Instruction, works with students and teachers, as does the Assistant Coordinator, and School Psychologists.

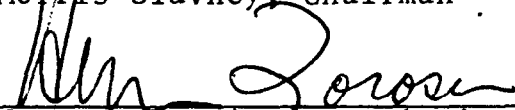
In order to carry out the principle of anti-fragmentation we have herein determined that all occupants of professional positions in a K through 12 school setting, who work with students and teachers, whether certified or not certified, by the Department of Public Instruction shall, absent special circumstances, be included in a unit consisting primarily of teachers. The facts herein warrant the inclusion of the positions involved in the existing unit, 4/ and we have amended the description of the unit reflecting such action by the Commission.

Dated at Madison, Wisconsin, this 29th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner

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- 2/ If and when Witkin returns to teaching he will then become a part of the bargaining unit.
- 3/ Whitefish Bay Schools (10799) 2/72; Stanley-Boyd Jt. School Dist. No. 4 (11589-A) 7/73; Hayward Jt. School Dist. No. 1 (12040) 7/73; Tomahawk Unified School Dist. No. 1 (12483-A) 5/74.
- 4/ With the exception of the Community Potential Project Director.