

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
 BLACKHAWK FEDERATION OF TEACHERS,  
 LOCAL 2308, WFT  
 For Clarification of a Bargaining  
 Unit Consisting of Certain Employees of  
 BLACKHAWK VOCATIONAL, TECHNICAL AND  
 ADULT EDUCATION DISTRICT NO. 5  
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Case XIV  
 No. 18919 ML-1167  
 Decision No. 13460-A

Appearances:

Mr. Robert J. Gurian, Staff Representative, appearing on behalf  
 of the Union.  
Holl, Donovan, Bolgrien & Kuhn, Attorneys at Law, by Mr. William A.  
 Bolgrien, appearing on behalf of the Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT

Blackhawk Federation of Teachers, Local 2308, WFT, having petitioned  
 the Wisconsin Employment Relations Commission to issue an Order clarifying  
 an existing collective bargaining unit consisting of certain employees of  
 Blackhawk Vocational, Technical and Adult Education District No. 5; and  
 hearing on such petition having been conducted at Janesville, Wisconsin,  
 on May 5, 1975, Howard S. Bellman, Commissioner, 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 of the Blackhawk Vocational, Technical and Adult  
 Education District excluding clerical, custodial and supervisory personnel  
 but including the positions of Student Counselor, Librarian and Federally  
 Funded Teacher (defined as those teachers who teach more than 50% of  
 their time in projects which are numbered federal projects that are  
 contingent upon an annual funding by the Federal Government), appropriately  
 includes the position of Counselor-Project Occupational Exploration/  
 Career Choice and excludes the positions of high school relations officer  
 and Veterans' Information officer.

Given under our hands and seal at the  
 City of Madison, Wisconsin this 10th  
 day of September, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
 Morris Slavney, Chairman

Howard S. Bellman  
 Howard S. Bellman, Commissioner

Herman Torosian  
 Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

In August, 1972, Blackhawk Federation of Teachers, Local 2308, WFT, hereinafter referred to as the Union, was certified as the exclusive collective bargaining representative of "all full-time teaching personnel, excluding clerical, custodial and supervisory personnel" employed by Blackhawk Vocational, Technical and Adult Education District No. 5, hereinafter referred to as the District. 1/ The unit was subsequently clarified, by Commission order issued July 30, 1973, to appropriately include the full-time positions of Student Counselor, Librarian and Federally Funded Teacher. 2/

An issue arose between the parties with regard to the appropriate inclusion or exclusion in said unit of one position which was in existence at the time of the aforementioned unit clarification and two positions which were created subsequent to the clarification proceeding.

The Union, contrary to the District, asserts that three positions; namely, High School Relations Officer, Veterans' Information Officer, and Counselor-Project Occupational Exploration/Career Choice, are appropriately included in the aforementioned collective bargaining unit. The District avers that the three positions do not qualify for inclusion in the full-time teaching unit on the basis that the incumbents are non-professional employes who do not have direct contact with District students. Accordingly, the District contends that whereas the three positions may constitute an appropriate separate unit or accretion to the non-professional unit of District employes, they are not appropriately included in the professional unit.

High School Relations Officer

The position of High School Relations Officer, presently occupied by John Hull, was established approximately 2 1/2 years ago. Initially the position was federally funded but at the time of the hearing in the instant matter, funds for the position were provided by the District.

The duties of the High School Relations Officer as set forth on the job description submitted into evidence are as follows:

- a) To identify potential students in high schools.
- b) To provide potential students with up to date, realistic, practical information and referrals to vocational counseling [sic] and testing as necessary.
- c) To assist interested students in making necessary arrangements for their continued education at Blackhawk Technical Institute.
- d) To provide a communication link between BTI counselors, instructors and other personnel.

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

2/ Vocational, Technical and Adult Education District #5 (Blackhawk Tec.)  
(11726-A) 7/73.

- e) To recruit potential candidates from the District's fifteen schools and five middle schools.
- f) Attend meetings, conferences, seminars and workshops as necessary, as a means of keeping up to date in selected areas of Student Services.
- g) Provide input in compiling BTT's student handbook.
- n) Articulate with and coordinate with High School Department Heads and Administrators.
- i) Provide timely reports to the Student Services Administrator for inclusion in his Board report.
- j) Coordinate Career Days with High Schools and provide for a follow-up for those identified as potential candidates for BTT.
- k) Coordinate financial aid information to counselors and potential students.
- l) Distribute brochures, catalogs and career information to all High Schools in the BTT District - provide racks to hold distributed information."

The High School Relations Officer disseminates career, vocational, technical and adult education information to potential students presently enrolled in area high schools. Hull works partially upon his own initiative and partially at the direction of his immediate supervisor, the Administrator of Student Services. Approximately 5% of his working time is spent functioning as career placement officer for District students. Hull's responsibilities in the area of career placement consist of providing job information to enrolled students. The job requirements of the position are described by the District as being minimal; specifically, that the individual be able to deal effectively with the public. Hull is presently enrolled as a student in the Blackhawk Vocational, Technical and Adult Education facility.

#### Veterans' Information Officer

The position of Veterans' Information Officer is a federally funded position created in July, 1973 subsequent to the unit clarification proceeding which included federally funded teachers in the existing unit. Burdette Richter, the incumbent, was at the time of the instant hearing, completing a two-year Associate's degree at Blackhawk Tech.

In a document prepared by Richter, the responsibilities of the Veterans' Information Officer are outlined as follows:

1. To contact each veteran personally upon return from military service.
2. To answer questions the veteran may have on GI bill benefits.
3. To urge each veteran in using his benefits to its maximum.
4. To work in cooperation with the Rock and Green county veteran service officers.
5. To counsel and guide the veteran in his chosen career.
6. To inform the veteran of continuing changes in his benefits.
7. To have a complete and thorough follow-up program on each veteran.

8. to make referrals where the possibility arises.
9. to help veterans who do not have high school diplomas or GED/s to get started in completing their education.
10. to work in cooperation with the 'vet rep' here on this campus.
11. to establish [sic] a communication link between the veteran and the regional office in Milwaukee.
12. to make available & accessible information relative to routine daily questions, problems and procedures concerning veterans."

Wichter serves as a liaison between student veterans and the Veterans' Administration in Milwaukee and the Rock County Veterans' Service Office. The qualifications for the position have been established, to a degree, by the U.S. Office of Education. The individual must be a veteran, preferably recent, with a sensitivity for the problems of veterans returning to campus, and with experience in working with the Veterans' Administration being considered helpful.

Counselor - Project Occupational  
Exploration/Career Choice

The position of Counselor-Project Occupational Exploration/Career Choice presently occupied by Dennis Jackson, was created and federally funded in September, 1974. The job announcement entered into the instant record specified the duties of the position to be as follows:

"Major areas of responsibility include:

- 1) Initiation of Project Occupational Exploration/Career Choice and implementation of the objectives at the Rock County Jail.
- 2) Vocational guidance and counseling to jail inmates to include the social, emotional, personal and family influences and ramifications of the incarceration.
- 3) Coordinate the various community helping agencies as they relate to the rehabilitation process of the incarcerated and the jail staff.
- 4) Referral agent in areas of deficiency critical to career choice and decision making to include the educational enterprise.
- 5) Follow-up and placement of inmates upon termination of imprisonment to insure satisfactory occupational adjustment in the community."

The job description further indicated that the following qualifications were required of applicants:

"A minimum of a Master's Degree in guidance and counseling or a Bachelor's Degree and 20 graduate credits in counseling courses with a minimum of one year occupational experience serving the disadvantaged [sic] and/or handicapped. Consideration will be given to those experiences gained in prison rehabilitation programs."

However, the District was unable to secure an individual with the aforementioned qualifications for the position. There is conflicting testimony on the record as to whether Jackson possesses a Bachelor's degree or a

Master's degree but it is clear that his qualifications do not conform completely to the above requirements.

Jackson's duties concentrate upon making the services of blackhawk tech. known to persons incarcerated in the Rock County Jail and following their progress upon enrollment. To this end, the District considers the most vital requirement of the position to be an understanding of and ability to communicate with the prison population.

All three of the above discussed positions are full-time and are supervised by the administrator of Student Services. None of the incumbents are certified as teachers or counselors. Section 2 of the collective bargaining agreement between the parties specifies that:

1. All teachers employed by the District board are subject to the Wisconsin Administrative Code, Section A-V 1, entitled 'Requirements for Certification'. Section A-V 1, Subparagraph 1.02, requires that a 'Provisional Certificate' or a 'Standard State certificate' be required of all teachers who teach half time or more in any one school year. Section A-V 1.04 and 1.05 of the Code details minimum State requirements for each of the above certificates. Copies of Section A-V 1 of the State Administrative Code will be made available to any teacher upon request to the Administrator of Instructional Services, and attached to this Agreement.

2. The Administrator of Instructional Services on behalf of the District shall have the right to apply for State certification approval for any teacher, for any subject, or any subject area for which the teacher might be considered eligible for certification, or for a subject or subject area the teacher claims to be qualified to teach. The teacher shall be responsible for renewal of any certificate issued to him or her. Non-compliance with the State Code requirements and/or additional District certification requirements shall be deemed cause for dismissal."

The requirements for a two-year provisional certificate for full-time personnel, which are less rigorous than those for a Standard State Certificate, also appear in the agreement.

The Union avers that certification is not a general hiring requirement of professional personnel in the Wisconsin Vocational-Technical System. Whereas an instructor may be certified without a degree, a counselor may be certified only with a degree. Instructors may be certified on the basis of an evaluation of work experience. The Union contends that although the three disputed positions do not perform direct student contact teaching duties, they do function in support of the educational and training program just as other federally funded non-teaching positions do which were included in the professional unit through the previous unit clarification. Conversely, the District asserts that the incumbents of the disputed positions are non-degreed, non-certified, non-teaching and non-professional. The positions, according to the District do not participate in the counseling of District students and thereby do not qualify as counselors. The District considers said positions to be of an informational or recruitment nature rather than instructional for District students.

#### DISCUSSION:

It has been the policy of the Commission to "include in a unit consisting of primarily classroom teachers those, who do not engage in classroom teaching, but who work with students or teachers in a non-supervisory capacity in support of the educational program." 3/

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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.

AS a result of such policy, the Commission has, for example included the position of librarian and guidance counselor in units of certified teaching personnel. 4/ The Commission has also recognized the existence of non-teaching professional bargaining units. 5/

A determination of the issues herein appear to hinge upon whether or not the disputed positions are, in fact, professional; and in the event that they are, whether or not they are appropriately included in the teaching staff unit.

The Municipal Employment Peace Act defines a professional employe as:

1. Any employe engaged in work:
  - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
  - b. Involving the consistent exercise of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employe who:
  - a. Has completed the courses of specialized intellectual instruction and study described in subd.1.d;
  - b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd.1."

The three positions in dispute evidence involvement in varied, non-standardized work which requires discretion and judgment by the employes. However, two of the three disputed positions herein, namely the High School Relations Officer and the Veterans' Information Officer, appear to function on the level of paraprofessional who exhibit some, but not all, of the statutory criteria required for professional status. Most significantly, the two positions lack the educational background mandated by the statutory definition of professional.

The statute specifically provides that a professional employe perform work "requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning . . . as distinguished from a general academic education . . ." Neither the position of High School Relations Officer nor the position of Veterans' Information Officer require or apply an educational background as anticipated by the statute. Finally, the certification requirements which appear in the parties' collective bargaining agreement and which may be invoked by the District, are applicable to instructional staff, counselors, librarians, instructional media specialists and audio-visual specialists. There is no reference to "officer" positions susceptible of certification. Accordingly, the Commission has concluded that the positions of high

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4/ See Vocational, Technical and Adult Education Dist. No. 5 (Blackhawk Techn.) (11726-A) 7/73 and West Allis-West Milwaukee Board of Education (8677) 4/64 respectively.

5/ Waukesha District VTAE (13818) 9/75.

School Relations Officer and Veterans' Information Officer are appropriately excluded from the collective bargaining unit of teaching personnel.

The position of Counselor-Project Occupational Exploration/Career Choice is distinguishable from the preceding two excluded positions on the basis of its educational requirements and counseling contact with the county prison population. The educational background and requirements and the function of said counselor do not appear to be differentiated from the requirements and duties of other counselors employed by the District. The distinction between the Counselor-Project Occupational Exploration/Career Choice who works with incarcerated persons and Counselors who work with students on campus appear to relate only to the nature of location of the clientele they are serving. It is apparent that the District in establishing the prison counseling program and requiring a counseling background of the individual assuming such duties, desires to provide the same quality of professional counseling services to the prison population as is afforded to the regular student population. Thereby the Commission is satisfied that the Counselor-Project Occupational Exploration/Career Choice has a similar educational background and performs an integral role in the educational program just as the Student Counselors employed by the District do and who were included in the collective bargaining unit herein through the previous unit clarification. Whereas the incumbent counselor is not presently certified as a counselor, there is no evidence that such certification, if sought by the District, could not be obtained.

Based on the above and foregoing, the Commission is satisfied that the Counselor-Project Occupational Exploration/Career Choice is a professional employe sharing a sufficient community of interest with the regular full-time teaching personnel to be included in the collective bargaining unit consisting of the latter. Therefore, the Commission has concluded that the position of Counselor-Project Occupational Exploration/Career Choice is appropriately included in the existing collective bargaining unit relevant herein.

Dated at Madison, Wisconsin this 10th day of September, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

Berman Torosian  
Berman Torosian, Commissioner