

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON METROPOLITAN SCHOOL DISTRICT

Decision No. 13735-D

Madison Teachers Incorporated (hereinafter MTI) having on September 7, 1978, filed a petition with the Commission requesting clarification to determine whether certain positions should be included in or excluded from an existing collective bargaining unit consisting of certain teachers and other related professional employees of Madison Metropolitan School District (hereinafter the District); and a hearing having been held in this matter at Madison, Wisconsin on October 10, 1978 by Christopher Honeyman, a member of the Commission's staff; and briefs having been received from both parties by November 6, 1978; and further briefs having been received from both parties by June 13, 1979; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

1. That Madison Teachers Incorporated, hereinafter referred to as MTI, is a labor organization representing employees for the purposes of collective bargaining and has its offices at 121 South Hancock Street, Madison, Wisconsin.

2. That the Madison Metropolitan School District, hereinafter referred to as the District, is a Municipal Employer employing professional and non-professional employees in the operation of a public school system, and has its primary office at 545 West Dayton Street, Madison, Wisconsin.

3. That at all times material herein, MTI has been, and is, the certified collective bargaining representative for employees of the District in the following-described bargaining unit:

A. All regular full-time and regular part-time teaching and other related professional personnel who are employed in a professional capacity to work with students and teachers, employed by the District including psychologists, psychomotrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading teacher, University Hospital teachers, trainable group teachers, librarians, cataloger, educational reference librarian, text librarian, Title I coordinator, guidance counselors, teaching assistant principals (except at Sunnyside School), project assistants, principal investigators, researchers and photographer technician, but exclu-

ding supervisor -- cataloging and processing, on call substitute teachers, interns, and all other employes, principals, supervisors and administrators.

4. That on or about September 7, 1978, MTI, in its capacity as representative of the employes of the District in the unit described above in paragraph 3, petitioned the Wisconsin Employment Relations Commission to issue an Order clarifying such collective bargaining unit by determining whether the positions listed below should be included in or excluded from that collective bargaining unit:

<u>Title</u>	<u>Occupants</u>	<u>Division</u>
Senior Program Leader	Thomas W. Brady	Department of School-Community Recreation
Program Leader	Jeffrey J. Zeigler	"
	Virginia F. Goode	"
	Miriam F. Simmons	"
	Rita A. Sevcik	"
	Cheryl Gustafson	"

5. That the duties of the one Senior Program Leader and the five Program Leaders in the District's Department of School-Community Recreation primarily include the effective supervision of part-time employes employed by that Department.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and files the following

CONCLUSION OF LAW

That the positions of Senior Program Leader and Program Leader are positions which are supervisory positions within the meaning of Section 111.70(1)(c) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT


That the positions of Senior Program Leader and Program Leader shall be, and hereby are, excluded from the unit described above in Finding Fact No. 3.

Given under our hands and seal at the City of Madison, Wisconsin this 3rd day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER CLARIFYING
BARGAINING UNIT

The Union petitioned for the accretion of five Program Leaders and one Senior Program Leader in the Employer's School/Community Recreation Department to the bargaining unit of teachers and "other related professionals".

Five Program Leaders and one Senior Program Leader work in the District's Department of School-Community Recreation, organizing and supervising a variety of recreational programs catering to groups ranging in age from elementary-school children to senior citizens. MTI contends that Program Leaders and Senior Program Leaders share a community of interest with other professional employees of the District who are included with teachers for purposes of collective bargaining unit placement, such as psychologists, librarians, social workers and so forth, and that therefore this group should be accreted into the existing unit. In the alternative, the Union argues that if the positions at issue are found not so integral with the existing unit's definition as to justify accretion, then the commission should treat the Union's petition herein as a petition for an election in which the six persons involved would be given a ballot choice between electing representation by MTI as part of the existing professional unit, or no representation.

The District argues primarily that the positions at issue lack a community of interest with other professionals sufficient to warrant accretion, but agrees with MTI that if such a degree of community of interest is not found an election of the type proposed by MTI would be appropriate and could be held under the rubric of the instant petition.

The District and MTI stipulated at the hearing that the Program Leader and Senior Program Leader positions are not supervisory within the meaning of MERA. Upon careful examination of the record, however, including the transcript of a hearing conducted in 1976 on this issue (see below) we determined that there existed a serious question of supervisory status concerning these classifications. On May 18, 1979 we informed the parties of this determination, and inquired as to whether either party wished as a result to reopen the hearing and/or submit additional argument. Both parties waived further hearing; each did submit further arguments. The District's argument did not address the question of supervisory status, being confined to a supplement to the District's argument that the positions at issue do not share a community of interest with those already in the bargaining unit of teachers and "other related professionals".

The Union's reply, however, not only noted that the parties had not placed the issue of supervisory status before us but also attempted to align the positions of Senior Program Leader and Program Leader with certain positions discussed in two cases involving Milwaukee Schools ^{1/} which the Commission found appropriate for inclusion in a bargaining unit there. But two points show that the Program Leader and Senior Program Leader positions in Madison are distinguishable from various Recreational Instructor classifications at issue in the cited Milwaukee cases: an examination of the decisions and records of those cases reveals that the Recreational Instructors, in Milwaukee, actually teach for substantial periods of their working time and did not have any supervisory responsibility over other employees of the Milwaukee school system, unlike the program leaders herein.

^{1/} Board of School Directors, Milwaukee, Wisconsin, Decision Nos. 6595 and 11820.

In order to determine whether a position is or is not supervisory within the statute's meaning, we consider these factor 2/:

1. The authority to effectively recommend the hiring, promotion transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment and discretion exercised in the supervision of employees.

For the reasons which follow, we cannot accept the parties' stipulation, nor do we reach the question of whether the Program Leader and Senior Program Leader positions have or lack a community of interest with other professional employees of the District: we find instead that these positions are supervisory.

The Senior Program Leader position is similar in its function to that of the Program Leader, but the former is being phased out. The incumbents in both positions work under several coordinators, who in turn report to Harold Metzen, Director of School-Community Recreation. Each coordinator has a specific area of service in which he or she has considerable latitude in deciding the nature, frequency and timing of programs that are offered; an example of this arrangement is Coordinator Kelliher, who is responsible for all adult sports programs, and under whom Senior Program Leader Brady works. Other Coordinators and their assigned Program Leaders are involved in elementary-school-age programs such as playgrounds, day camps and swimming; in cultural programs, and in middle-school-age programs, among other areas. These programs are directly run not by the Program Leaders or Coordinators, however, but by part-time employees (and volunteers) recruited for this purpose among all sectors of the Madison area's population, from teenagers hired to collect balls at baseball games, through regular teachers in the District's employ who contract separately to coach or umpire games, to persons with doctoral degrees who teach specialized courses. Metzen testified that in the course of a year his Department issues some 2,400 contracts to part-time employees for these purposes, with about 1,000 different employees being involved; in addition, some 800 volunteers are used at one time or another. The length of employment of such part-time employees varies from as little as the duration of a single baseball game (for some umpires, scorers or ball retrievers) to as much as 36 hours per week for an eight week season (for certain playground supervisors).

Virtually the entire working week of a Program Leader is spent in hiring, scheduling or overseeing this work force, or in arranging the programs they work in. Metzen testified that the authority that specific Program Leaders have to hire part-time employees varies, but all are involved in hiring to the extent at least of interviewing applicants and making recommendations and several have undisputed

2/ St. Croix County (Health Care Center), Decision No. 14518, 4/76;
Amory Joint School District No. 5, Decision No. 15793-A, 4/78.

authority to hire employees without any other review. Thus, for example, Senior Program Leader Brady can, according to Metzen's uncontradicted testimony, hire and fire employees such as softball umpires on his sole authority, and the Program Leader in aquatics (not identified by name in the record) hires instructors without review by a Coordinator. Other Program Leaders have previously testified ^{3/} to similar discretion in hiring.

It appears from Metzen's testimony that the amount of independent discretion in hiring exercised by some Program Leaders is greater than others' because of variations in the Program Leaders' experience and/or because of differing preferences or policies of their respective Coordinators. Program Leader Miriam Simmons testified that in hiring part-time employees she defers to her Coordinator's knowledge of past employees. But Simmons also testified that at times she has been the sole person to interview a prospective employee, and she did not recall any instance when she had made a recommendation to hire which had been overruled. Simmons did testify that she had on one occasion recommended discharge of a part-time employee and that this recommendation was not followed; in the 1976 hearing, however, Kremer stated that though she had never discharged an employee she had chosen "a couple" not to be rehired when their contracts expired.

To some extent the amount of independent judgment that can be exercised in hiring, at least in some of the programs, is curtailed by a shortage of applicants; Program Leader Jeffrey Ziegler, for example, testified that his programs are perennially short of umpires and that as a result "very little screening" is done in the hiring process. The same witness testified, though, that he spends a great deal of time recruiting employees, and that he can and does replace an employee on the spot if the employee is inappropriately dressed or causes some other "glaring incident". And while in virtually all cases the initial wage rates for part-time employees are set either directly by the Coordinator or by agreement between the Program Leader and the Coordinator, Ziegler testified that he has authority to award a part-time employee a 25¢ - per-hour raise in the middle of the season "...if he's done a competent job for us and, more than anything else, if he's reliable in my esti-

^{3/} In a previous Petition for clarification of the existing professional bargaining unit, MTI initially urged the accretion of the same classifications at issue here. Following a hearing (on these as well as other classifications) held on February 9, 1976, MTI requested that these classifications be withdrawn from consideration. The request was granted; at the hearing in the instant matter, however, there was no dispute that testimony taken in the 1976 hearing remains accurate in its description of Program Leaders' and Senior Program Leaders' functions, despite turnover among the actual individuals who testified at that time. We have taken administrative notice of that testimony and, in particular, the testimony of Program Leaders Hugh Tonagel and Pat Kremer. Kremer, for example, testified that she would "select the people, contract them, put them under contract and explain how their pay schedule is set up", and that she herself signed the part-time employees' employment contracts. Kremer was then assigned to swimming pool programs and special recreation programs; in the swimming pool programs alone there were 50 part-time employees (as instructors, lifeguards and locker room attendants). Tonagel testified that he was responsible for various sports programs, including softball, touch football, baseball and basketball; that in the basketball program alone there were 252 teams competing under the eye of about 180 officials; and that he was responsible for recruiting, hiring, evaluating and day-to-day supervision of those 180 part-time employees, as well as others in other programs.

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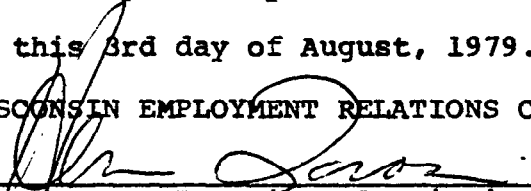
At no time do the Program Leaders do any of the work of the part-time employees: the largest component of the work day of several appears to be the securing of substitutes for the many part-time employees who call in to say they will be absent. When the Program Leaders visit the programs they supervise they do so only to check on the progress of the game or other event, to find out if any problems have arisen and to keep an eye on the job performance of the part-time employees. That part of the Program Leaders' work which does not involve supervision of others could almost entirely be characterized as administrative. It includes such functions as obtaining space, equipment and other facilities for programs, arranging for publicity and, according to Metzen's testimony, conducting training programs for such part-timers as umpires, using training funds established for the purpose but which are under the Program Leaders' control.

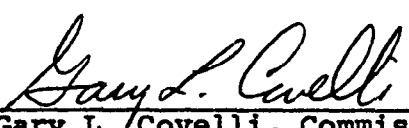
The extent of the Program Leaders' involvement in hiring, the fact that they do essentially no work that is similar to that of bargaining-unit professional employees or other non-supervisory employees of the District, their apparent autonomy in work assignment, and the scattered but unrebutted evidence that one Program Leader or another can refuse to rehire employees, give them raises, or replace them on his or her own authority, together with the sheer volume of such decisions which the number of part-time employees involved must entail, establish with certainty that these positions display the determining factors of supervisory status listed above in sufficient combination and degree to warrant our finding that they are supervisory. We do so.

Dated at Madison, Wisconsin this 3rd day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner