

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case VII  
No. 17470 ME--1009  
Decision No. 13818

Perry & First, Attorneys at Law, by Mr. Richard Perry, appearing on behalf of the Petitioner.

Quarles & Brady, Attorneys at Law, by Mr. George R. Whyte, Jr., appearing on behalf of the Municipal Employer.

Mr. Robert W. Lyons, Representative, appearing on behalf of the Intervenor.

Waukesha County Technical Educators Association, herein the Association, which presently represents certain professional teaching and supportive personnel in the employ of Waukesha District 8 Area Board of Vocational, Technical and Adult Education, herein the Municipal Employer, having filed a petition with the Wisconsin Employment Relations Commission requesting a determination as to whether the classifications of Adult Learning Center Manager, High School Relations Assistant, Athletic Director, Placement Officer, Safety Instructor and Part-Time Counselor are appropriately excluded from the unit of employees represented by it; and hearing in the matter having commenced January 31, 1974 and having been concluded April 23, 1974 before Stanley H. Michelstetter II, Hearing Officer; and the Hearing Officer having determined that Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, Local 2491, herein Local 2491, as the representative of certain non-professional employees of the Municipal Employer might have an interest in the proceedings with respect to the High School Relations Assistant position, and the Hearing Officer having on March 4, 1974 given Local 2491 notice of the instant proceeding and an opportunity to appear and give evidence with respect to that position; and Local 2491 having appeared on March 6, 1974 and having been permitted to intervene without objection from the parties; and the Association having withdrawn its petition with respect to the Adult Learning Center Manager, Safety Officer and Part-time Counselor; and the Commission having reviewed the record, the arguments and briefs of counsel, 1/ and being fully advised in the premises and being satisfied that no reason has been established to change its prior determination with respect to the position of Athletic Director; that the position of Placement Officer is not properly included in the aforesaid present bargaining unit represented by Petitioner; and that the High School Relations Assistant is a non-professional employee; and that therefore the Association's petition

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should be dismissed with respect to the positions of Athletic Director and Placement Officer and that the High School Relations Assistant is not appropriately included in the Association's aforesaid bargaining unit;

NOW, THEREFORE, it is

ORDERED

1. That the bargaining unit consisting of all regular full-time teaching personnel, including department chairmen and guidance counselors, and all regular part-time teaching personnel who teach daytime credit classes excludes the position of High School Relations Assistant.

2. That the petition filed by Waukesha County Technical Educators Association with respect to the positions of Athletic Director and Placement Officer be, and the same hereby is, dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin this 5<sup>th</sup>  
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

WAUKESHA DISTRICT 8 AREA BOARD OF VOCATIONAL, TECHNICAL AND ADULT  
EDUCATION, VII, Decision No. 13818

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

During the course of the hearing the parties resolved their differences with respect to all of the positions in contention except the Athletic Director, the Placement Officer and the High School Relations Assistant.

ATHLETIC DIRECTOR

In a previous proceeding, the Association filed a petition on May 19, 1971 seeking an election for basically the instant bargaining unit including the position of Athletic Director. Hearing was held thereon on June 9, June 10 and June 30, 1971 including testimony with respect to the position of Athletic Director, 2/ at all relevant times occupied by Wallace W. Wiese. Wiese did not testify therein. Briefs were exchanged December 7, 1971. On June 21, 1972 we held that the Athletic Director was a supervisory/managerial position and excluded it from the instant unit. 3/ Thereafter on October 24, 1972, Petitioner was certified as the representative of the instant unit, excluding the Athletic Director. 4/ At no time prior to the instant petition did the Association make any attempt to seek to provide additional testimony with respect to that position. By its instant petition for unit clarification, the Association seeks, in part, to have us reverse our decision with respect to the Athletic Director because of its assertion that our previous determination was based on the false and misleading testimony of the Municipal Employer's representatives. The Municipal Employer contended that the prior determination is res judicata.

The Association offered the testimony of Wiese to refute that presented by the Municipal Employer in this and the prior proceeding. No reason was offered for the failure to produce that testimony in the previous proceeding. The evidence also unequivocally established that circumstances have not materially changed since the previous case. We conclude that the foregoing circumstances do not warrant any redetermination of our prior holding. We are therefore dismissing the Association's petition with respect to this position.

PLACEMENT OFFICER

In the previous case, cited above, we also found that the combined position of Financial Aides, Placement and Veterans' Officer, then occupied by Bob Fitzpatrick, lacked a community of interest with the employees in the instant bargaining unit. At the hearing herein it was firmly established that the position has since been divided into two positions, occupied by two employees. The Association seeks clarification of the status of only one of those positions, Placement Officer, now occupied by David P. Swanson.

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- 2/ Transcript of proceedings, pp. 217-224, Waukesha District 8 Area Board of Vocational, Technical and Adult Education, Case III.
- 3/ Waukesha District 8 Area Board of Vocational, Technical and Adult Education (11076) 6/72, at pp. 15-16.
- 4/ Waukesha District 8 Area Board of Vocational, Technical and Adult Education (11076-A) 10/72.

The evidence reveals that the Placement Officer, Swanson, is required to have and has a Bachelor's Degree in Business Administration. His primary function is to conduct a program of obtaining permanent employment for graduates and temporary employment for undergraduates (including apprenticeships). In this regard, Swanson spends the largest portion of his time visiting at least 20 to 30 new employers a month to convince them of the desirability of employing the Municipal Employer's graduates and to arrange interviews with students on campus. He also conducts a direct-mail campaign for the same purpose. He spends a substantial amount of time answering correspondence and maintaining telephone contact with these employers. Swanson also maintains a library of all area employers and other job market information. In turn, he presents this information concerning the job market to area high school students and WCTI students. In supervising the interviewing process, he compiles background information about the qualifications of individual students, using the student's transcript, the student instructors' evaluations, making this information available to the prospective employers. Swanson then compiles data concerning undergraduate and graduate employment. Because the selection of vocation by those interested in becoming students at the Institution and the selection of the kinds and maximum permissible enrollments of courses offered by the Institute depend on the employment market, Swanson is often called upon to provide resource information to faculty, students and prospective students.

The Placement Officer does not teach. Although guidance counselors, who are required to possess a Master's Degree in Guidance and Counseling, compile psychological data concerning individual students, that data gathering requires the intricate evaluation of raw information. In turn, the data collected is primarily used to assist students in their own subjective decision-making and problem-solving. On the other hand, the Placement Officer merely routinely compiles information and others' evaluations to assist employers in their evaluations of a prospective employee. It appears that as a matter of routine, Swanson suggests to students that they not apply for positions for which they appear unqualified, though the student may still decide to apply. We conclude that although guidance counselors may have performed similar functions in the past, the position of Placement Officer does not perform such functions as warrant its inclusion in the instant bargaining unit. Thus, the Association has not shown changed circumstances which justify a result different from that which we previously made, and therefore, the position of Placement Officer is excluded from the unit. However, on the basis of the academic prerequisites of the position, it is found to be "professional" and may be included in a residual unit comprised of professional positions not included in the instant unit. Further, should the employees in such a unit vote in an appropriate proceeding for representation by the instant Petitioner, said residual unit would be merged with the instant unit. 5/

#### HIGH SCHOOL RELATIONS ASSISTANT

At the outset of the hearing it appeared to the Hearing Officer that Local 2491 might have a claim to represent the instant position. During a period of adjournment, the Hearing Officer gave it notice of these proceedings and permitted it to intervene on March 6, 1974 prior to the taking of any testimony concerning this position and without objection from either party. Local 2491 thereafter participated in

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5/ Fox Valley Technical Institute, District No. 12 (13204).

the proceeding relevant to this position without objection to either the manner or timing of notice.

In a prior proceeding between the Municipal Employer and Local 2491, the parties in jointly signed correspondence stipulated that:

"The School has requested of the union to re-evaluate the attached job descriptions for possible withdrawal [sic] from the provisions of the contract. Mr. Dennis Balzer, President of Local 2491, agreed that probably the two attached positions in question are in fact more management oriented, but would like an outside evaluation. The school agrees to such an evaluation." 6/

On the basis of the stipulated evidence, a position description dated July 18, 1973, we determined that the High School Relations Assistant is a managerial position. 7/

During the instant proceeding, the Association took the position that the High School Relations Assistant has functions, wages and conditions of employment similar to its unit employees. Local 2491 took the position that it has consistently urged that the position is not managerial, that the position was in its unit at one time and that our previous determination was not correct. The Municipal Employer took the position that our prior determination should be given precedential value in this proceeding because the testimony substantiated the job description's accuracy. It also urged that Local 2491 should be held bound by the prior proceeding.

The testimony reveals that the High School Relations Assistant, under the supervision of the Assistant Director of Student Services, is the person solely responsible for providing high school students, primarily in the 12 surrounding high school districts, with accurate information as to the Municipal Employer's programs. She spends approximately half of her time off campus at the area schools, where she checks on the status of catalogs and other literature supplies, provides information to high school guidance personnel, and arranges for high school student tours of the campus. She spends approximately 25 percent of her total time presenting talks to large groups of area high school students concerning the opportunities available at Waukesha County Technical Institute. On rare occasions she talks to individual students in "career night" booths or school-office call formats. At these meetings she distributes literature and answers questions about the programs available at the Institute. She does not teach or counsel the Municipal Employer's students.

The remaining 50 percent of her time is spent on campus. There she arranges tours of the campus including the obtaining of students as tour guides and coordinates the use of the Municipal Employer's guidance and marketing department facilities for recruitment purposes. She develops and maintains a stock of information supplies. She prepares a monthly news letter to local school guidance personnel as to the nature of new programs and changes, although her supervisor reviews the news letter.

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6/ Board of Vocational, Technical and Adult Education (Waukesha County) District No. 8, Case XIX

7/ Board of Vocational, Technical and Adult Education, (9874-A) 9/73.

She also maintains a library of career films for the use of area schools. In obtaining films, she submits a requisition slip for films, previews them to determine if they have a proper career orientation, returning them if they do not. She submits films passing this scrutiny to appropriate departments to determine if the film gives a technically correct view of the particular career. As a practice, she and her supervisor review the films approved by the departments to determine if they should be purchased. She and her supervisor mutually determine if purchase is warranted, although when she feels strongly about a film, her supervisor agrees to its purchase. Thereafter he routinely approves her request of purchase for the approved films.

She prepares and submits to her supervisor a proposed annual budget of approximately \$5,500 to \$10,000. Of this amount, \$3,000 is allocated to film purchases, and \$2,000 to \$3,500 for an outside advertising firm's contract. This budget is reviewed and approved by her supervisor, his supervisor and the Municipal Employer.

The position requires a two-year associate degree, which the present occupant has. No certification or licensing is required. The High School Relations Assistant is employed on a 12-month management contract and receives the same benefits as management employees. She is required to work on a variable schedule, including night work. The 1973-1974 wage range for the position is Management Range VI, which is \$6,500-\$10,500 per year. By contrast, teachers are employed on a nine and one-half month contract with the initial rate of \$8,324 during the 1973-1974 school year. The guidance counselors, who Petitioner claims the position is most closely related to, receive from \$10,500-\$18,200 for a 12-month work year. All of their work is done on the Municipal Employer's campus during normal working hours.

We conclude that this position is non-professional in that it does not require "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 . . . as distinguished from a general academic education . . . ." 8/ We also conclude that the position lacks a sufficient community of interest with the professional unit to be included therein. 9/

Finally, we conclude that the evidence presented herein warrants the exercise of our discretion to modify our aforesaid prior determination based upon the job-description document above, in that the evidence herein does not substantiate said job description presented by the parties

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8/ Section 111.70(1)1.

9/ Section 111.70(4)(d)2.a. provides in relevant part:

"The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, . . . ."

therein, 10/ or establish that the High School Relations Assistant is a managerial position. 11/

Dated at Madison, Wisconsin this 5<sup>th</sup> day of September, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

Norman Torosian  
Norman Torosian, Commissioner

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10/ Joint Exhibit 7a herein.

11/ We are, this day, also issuing an appropriate unit clarification modifying the unit represented by Local 2491. (9874-B).