

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXII  
No. 19321 ME-1213  
Decision No. 14521

Mr. Robert C. Kelly, Kelly and Haus, Attorneys at Law, appearing on behalf of the Association.

Mr. John D. McKay, Parins and McKay, S.C. Attorneys at Law, appearing on behalf of the Municipal Employer.

Green Bay Education Association having requested the Wisconsin Employment Relations Commission to issue a clarification of a collective bargaining unit wherein the Petitioner had previously been voluntarily recognized as the exclusive representative of certain employees of Joint School District No. 1, City of Green Bay, et al.; and hearing having been held in the matter at Green Bay, Wisconsin, on August 20, 1975, Marvin L. Schurke, Hearing Officer, being present; and the parties having subsequently filed briefs; and the Commission having considered the evidence and arguments and being fully advised in the premises, makes and files the following

IT IS ORDERED that the positions of Special Education Supervisor: (Emotionally Disturbed - Learning Disabilities). Special Education Supervisor: (Speech) and Special Education Supervisor: (Deaf) shall be, and the same hereby are, excluded from the collective bargaining unit consisting of all certificated teaching personnel employed by the Green Bay Joint School District No. 1, excluding supervisory personnel.

Given under our hands and seal at the  
City of Madison, Wisconsin this 8th  
day of April, 1976.

Morris Slavney, Chairman

Howard S. Bellman, Commissioner

Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

Green Bay Joint School District No. 1, hereinafter referred to as the Municipal Employer has voluntarily recognized the Green Bay Education Association, hereinafter referred to as the Association, as the collective bargaining representative for:

" . . . all regular full-time regular part-time certificated teaching personnel employed by the Board including classroom teachers, librarians, guidance counselors, psychologists, psychometrists, social workers, teachers of the homebound, department chairmen, unit leaders, job placement counselors, and teachers on leave of absence; and certified physical and occupational therapists; but excluding superintendents, principals and those directors and coordinators who are 'supervisors' as defined in State Statutes 111.70."

On June 30, 1975, the Association petitioned the Wisconsin Employment Relations Commission to determine whether employees holding certain positions were supervisory, and therefore properly excluded from the bargaining unit. Prior to hearing, the parties resolved that the positions of "Director of Special Education Needs" and "Library - Cataloger", which were among the positions listed on the petition, were non-supervisory and properly included within the bargaining unit. The parties also stipulated that the "Vocational Education Coordinator", "Science Technologists", "Director-Federal Programs", "Attendance Director" and "Director Instruction Media Department" were supervisory positions appropriately excluded from the bargaining unit. Thus, only the status of the positions of Special Education Supervisor: (Emotionally Disturbed - Learning Disabilities), Special Education Supervisor: (Speech) and Special Education Supervisor: (Deaf) were left unresolved. The parties stipulated at the hearing, for purposes of determining the supervisory status of said positions, that these three positions could be considered as substantially identical.

The Instruction division of the Green Bay School District is divided into four separate subdivisions. These include Elementary Education, Secondary Education, Special Education - Child Study, and Instructional media. An assistant Superintendent, who is immediately subordinate to the Superintendent of Schools, heads the Instruction Division, while a director heads each of the four subdivisions. The Special Education - Child Study subdivision is further subdivided according to areas of instruction or "exceptionalities". The sections which are concerned with the emotionally disturbed and learning disabled, those with speech problems, and the deaf are each headed by a Special Education Supervisor. Sections dealing with Mental Retardation, Physically Handicapped, Visually Impaired, and School Age Parents exceptionalities are under the direct supervision of the Director of Special Education.

The Special Education Supervisors' positions were created in September, 1974, after the date of the recognition agreement defining the bargaining unit. Special Education Supervisors must hold a Director of Special Education License from the Department of Public Instruction. This requires a Master's Degree in a particular exceptionality, as well as further graduate credit "in other related special education areas." Special Education Supervisors are hired on an eleven month basis, from August 1 to June 30 and have no direct classroom teaching assignments. Instead they oversee the instruction in their respective exceptionalities. Their duties and responsibilities, as outlined by the Municipal Employer, include the following:

"SUPERVISOR - SPECIAL EDUCATION (K-12)

Types of activities performed frequently

Supervising special classes and programs; participating in staffings with Psychologists, Social Workers and Attendance Officers which results in screening, selecting, and assigning of pupils to appropriate educational programs; assisting in developing short and long range special education plans; attending professional meetings.

POSITION RESPONSIBILITIES

Supervises special education classes and programs.

Continuously evaluates programs.

Screens, selects, and assigns pupils to appropriate special education programs.

Interprets test results and explains special education services to parents of handicapped children.

Works cooperatively with school personnel regarding the concerns of handicapped children and parents.

Assists in developing short and long range special education plans.

Arranges for enrollment, transfers and transportation of special students.

Develops curriculum guidelines for special education in conjunction with teachers and Director - Special Education.

Cooperates with national, state, local and district agencies in research and development of new programs.

Assists with evaluation of special education, child study staff.

Works closely with community, regional and state officials of similar programs.

Maintains records as required by the Division of Handicapped Children and local district.

Conducts in-service meetings.

Helps select and order appropriate instructional materials and equipment.

Works cooperatively with a variety of community agencies to improve services and relationships.

Writes brochures, newsletters, announcements, proposals for grants in conjunction with the Director - Special Education."

POSITION OF THE UNION:

The Association contends that the Special Education Supervisors are personnel working in support of the education program rather than supervisors

as defined by Section 111.70(1)(0)1 of MERA. It argues that the role of the Special Education Supervisors in hiring is limited to the initial stages of a multi-stage process, and that any recommendation made by the Special Education Supervisor is only part of a collective judgment which should not be considered a right to effectively recommend the hiring of individuals. Likewise, the Association claims that the evaluation of teaching personnel which is also conducted by Special Education Supervisors is similarly only part of a joint effort; and that meaningful consideration is only given such evaluations when the Special Education Supervisors superiors concur with them. The Association points out that Department Chairmen and Unit Leaders, all of whom are included in the bargaining unit, have similar responsibilities in both of these areas.

Based upon evidence that employee grievances would be taken to the school building principals rather than the Special Education Supervisors, the Association contends that Special Education Supervisors are not "sufficiently involved in grievance resolution so as to make the position supervisory". Finally the Association claims that the Special Education Supervisors have only minimal input on teacher assignments, no input on teacher transfers, and only infrequent personal contact with the employees who they allegedly supervise, so that the Special Education Supervisors are not a proper supervisory exclusion from the bargaining unit.

#### POSITION OF THE MUNICIPAL EMPLOYER.

The Municipal Employer argues that the role of the Special Education Supervisors in the areas of employee hiring, evaluation, and grievance resolution is significant enough to make their positions supervisory. It distinguishes the roles of the Department Chairmen and Unit leaders, claiming that their responsibilities in these areas are much more casual than those of the Special Education Supervisors. Furthermore, the Department Chairmen and Unit Leaders, unlike the Special Education Supervisors, have substantial teaching responsibilities, and work only during the school year. The Municipal Employer claims that the interests of the Special Education Supervisors are so at variance with those of other employees that they are appropriately excluded from the bargaining unit.

#### INDICIA OF SUPERVISORY AUTHORITY:

While a significant number of the duties specified in the job description for the Special Education Supervisor might be considered as supportive of the educational program rather than as supervision of employees working within that program 1/ certain of the duties listed in that job description and certain duties performed in fact fall well within those which would be considered "supervisory" as defined by Section 111.70(1)(0) of MERA. The presence of some non-supervisory duties is not determinative as to supervisory status, so long as the positions in question have supervisory responsibilities as well. 2/

---

1/ Janesville Board of Education (6678) 3/64; Whitefish Bay Schools (10799) 2/72.

2/ Stanley-Boyd Area School District No. 4 (11589-A) 7/73.

The record indicates that the Special Education Supervisors do play a significant role in the hiring of teaching personnel within their respective exceptionalities. The Special Education Supervisors evaluate the credentials and transcripts of potential job applicants and travel to college campuses to conduct initial interviews with candidates. They recommend that candidates be invited to Green Bay for interviews or that candidates be dropped from further consideration. When candidates are invited to Green Bay, the Director of Special Education becomes involved in the interviewing process. Joint recommendations are then made by the Special Education Supervisors and the Director of Special Education to the Assistant Superintendent for Instruction when candidates are recommended for hiring. While, as the Association points out, candidate credentials are reviewed and approved by the Assistant Superintendent of Instruction, the Superintendent of Schools, the Education Committee of the Board of Education and the Board of Education itself before candidates are hired, meaningful screening of candidates is accomplished at the initial stages of the selection procedure, for it is the Special Education Supervisor and the Director of Special Education who have the responsibilities of assessing candidates' qualifications and interviewing such candidates.

During the time that the Special Education Supervisor positions have been in existence no special education teacher has initiated a grievance under the collective bargaining agreement. However, the record indicates that lines of authority are drawn so that a special education teacher might initiate a grievance either with the building principal in the school to which the teacher is assigned or, if the grievance relates to a matter involving the special education program, to the appropriate Special Education Supervisor. Although the record indicates that if a dispute arose between a building principal and a Special Education Supervisor with respect to the resolution of a grievance, the building principal would likely prevail, this does not detract from or nullify the fact that, absent such a dispute, the Special Education Supervisors do possess the authority to resolve grievances pertaining to their programs.

The Special Education Supervisors are responsible for the direction of instruction and the educational program within their respective exceptionalities. They become involved in the preparation of the budget for activity within their fields and are responsible for the preparation of a year-end report to the Wisconsin Department of Public Instruction. In the course of performing these functions, they observe and evaluate the teachers within their respective fields, and make suggestions to teachers for the improvement of educational methods or techniques. The Special Education Supervisors prepare and submit formal written evaluations of the special education teachers under their jurisdiction. While a building principal might also evaluate a special education teacher, the primary responsibility and authority for the evaluation of such teachers lies with the Special Education Supervisors and the Director of Special Education. All of the evaluations made by the Special Education Supervisors up to the time of the hearing have been positive, however the record indicates that negative evaluations by Special Education Supervisors could result in termination or nonrenewal.

There is a rather complex hierarchy of supervisory and management personnel within the Green Bay school system. The hiring process described above, which involves reviews of decisions through six different levels, and the grievance process, where substantial overlaps of authority are noted, are particular examples. Such situations are not uncommon in the public sector, and the Commission has previously adopted a number of balancing criteria for use in making determinations as to supervisory status in such situations. One such factor which is particularly pertinent here is.

"the number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees". Wauwatosa Board of Education (6219-D) 9/67; Racine County (8330) 12/67; City of Milwaukee (6960) 12/64; and Manitowoc County (Social Services) (13434) 3/75.

In the Emotionally Disturbed - Learning Disabilities exceptionality, there are 46 teachers working under the Special Education Supervisor. There are 18 teachers working under the Special Education Supervisor in the Speech area, and 11 teachers working in the Hearing Impaired (Deaf) exceptionality. These teachers are all under the jurisdiction of the Director of Special Education. If the Commission were to find that the first level of supervision in the Special Education - Child Study Division were the Director of Special Education, it would be finding that the Director has first line supervisory responsibility over approximately 75 professional employees in three diverse fields, which in itself raises serious questions about the credibility of such a finding. In addition to the above mentioned special education teachers, the Director of Special Education also directly supervises employees in five other exceptionalities without the aid of any other supervisory personnel.

The parties agree that persons holding the title of "Department Chairman" in the social work and psychology fields are not supervisory, but the Employer would distinguish those positions from the positions in dispute here. Based upon the entire record, we concur and thus find that the Special Education Supervisor positions are not sufficiently similar to the Department Chairmen and Unit Leader positions included in the bargaining unit to be so included. This finding is based primarily upon the fact that the Department Chairmen and Unit Leaders carry a teaching or case load of their own, and therefore perform substantial work of the same nature as that performed by the employees working under them, so that they are primarily involved in direct education functions and only secondarily involved in overseeing the work of others. 3/ On the contrary, the Special Education Supervisors have no teaching responsibilities, their only direct contacts with students relate to the selection and assignment of students to an appropriate special education exceptionality.

The Commission also deems significant the fact that the Special Education Supervisors are employed on an eleven month basis whereas the special education teachers, the department chairmen and the unit leaders, all of whom are in the bargaining unit, work the more traditional 9 month or 190 day contract year. This fact coincides with the distinction found by the Commission herein; namely, that while bargaining unit personnel are primarily concerned with direct educational functions involving regular student contact during the normal school year, the Special Education Supervisors are not so engaged and instead have essentially supervisory responsibilities.

#### CONCLUSION:

The Commission thus finds that the Special Education Supervisors are supervisors within the meaning of Section 111.70(1)(0) of WERA, and

---

3/ See discussion of High School Department Chairmen in Wausau Joint School District (10371-A) 4/72.

that they are properly excluded from the collective bargaining unit of non-supervisory teaching personnel.

Dated at Madison, Wisconsin this *8th* day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Howard S. Bellman*  
Howard S. Bellman, Commissioner

*Herman Torosian*  
Herman Torosian, Commissioner