

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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WHITEFISH BAY JOINT SCHOOL	:	
DISTRICT NO. 1 and WHITEFISH	:	Case VI
BAY EDUCATION ASSOCIATION	:	No. 19061 ME-1184
	:	Decision No. 14524
Involving Certain Employees of	:	
	:	
WHITEFISH BAY JOINT SCHOOL	:	
DISTRICT NO. 1	:	

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Appearances:

Mr. John T. Coughlin, Mulcahy & Wherry, S.C., Attorneys at Law,  
 appearing on behalf of the District.  
Ms. Donna Ullman, State Staff Representative, appearing on behalf  
 of the Whitefish Bay Education Association.

ORDER CLARIFYING COLLECTIVE BARGAINING UNIT

Whitefish Bay Joint School District No. 1 and Whitefish Bay Education Association, having jointly petitioned the Wisconsin Employment Relations Commission to issue an Order determining whether the positions of Coordinator of Student Services and Guidance, and Assistant Athletic Director for Girls' Sports, are to be included in a present collective bargaining unit consisting of certified teaching personnel in the employ of said District; and hearing on said petition having been held at Milwaukee, Wisconsin, on June 9, 1975, Stanley H. Michelstetter II, Hearing Officer, being present; and the Commission having reviewed the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following

ORDER

That the positions of Coordinator of Student Services and Guidance and Assistant Athletic Director for Girls' Sports are properly included in the collective bargaining unit consisting of certified teaching personnel in the employ of the Whitefish Bay Joint School District No. 1.

Given under our hands and seal at the City of 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

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

The parties jointly petitioned for clarification of the bargaining unit of certain certified teaching personnel presently represented by the Association with respect to two positions; Coordinator of Student Services and Guidance, and Assistant Athletic Director for Girls' Sports.

COORDINATOR OF STUDENT SERVICES AND GUIDANCE:

The District seeks the exclusion of this position presently occupied by John O. Hirst, as supervisory/managerial. The Association, on the other hand, contends that Hirst continues to perform substantially the same guidance functions performed by him when the Commission included him in the collective bargaining unit, 1/ and that his additional duties are insufficient to warrant exclusion.

Coordinator Hirst continues to perform all of the elementary guidance functions at the Henry Clay School as the only elementary guidance counselor in the school district. He is paid at the guidance counselor rate. His newly added duties consist of staffing of elementary coaching positions, development and implementation of class sections and student programming, and substituting for the Principal in his absence. He also attends virtually all of the Principal's meetings and selected Administrative Council Meetings.

Coaching positions at the Henry Clay elementary school are filled on a strictly voluntary basis, with the ultimate selection made by the Principal. A newly instituted district-wide system of job posting for coaching vacancies will largely make the application process routine. Hirst interviews applicants and recommends coaching assignments. In the rare case that more than one person applies for a coaching position at the Henry Clay school, Hirst's function is confined to making a recommendation between the competing volunteers. In that event the Principal would then consult with the two volunteers and Hirst, and the Principal would then independently determine which of the two would be selected.

Hirst's new functions with respect to implementation of class sections and student programs include: administering standardized tests to students, establishing class sections and student assignments thereto for each school year, bearing ultimate responsibility for student grading, establishing record keeping systems including the records to be kept and the information to be recorded thereon, and the overseeing of record keeping. In the latter regard Hirst is authorized to recommend the discipline of teachers who refuse to keep proper records. Although he has never had occasion to recommend any discipline, if any were recommended, the Principal would make an independent determination after independent investigation with respect thereto.

Hirst also attends all Principal's meetings and certain Administrative Council meetings when invited to attend. Hirst does not participate in any way in the decision making functions of those meetings.

Hirst also spends five percent of his total time acting for the Principal in his absence. The Principal, under the direction of the Superintendent, is responsible for all facets of the operation of the Henry Clay School, including participation in the selection of unit

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1/ Whitefish Bay Public Schools, (10799) 2/72.

and non-unit personnel, recommending employe transfers, dismissals, evaluating, scheduling and assigning all personnel. The Principal also has substantial administrative responsibility.

Based upon all of the foregoing, the Commission concludes that Hirst does not regularly exercise sufficient independent judgment with respect to the supervisory responsibilities listed in Section 111.70(1)(o)2 to be considered a supervisor within the meaning of the statute. Although he has been given some authority to recommend the assignment of coaches and the discipline of individuals who do not maintain adequate records, the record indicates that he exercises this infrequently, if at all, and that it is subject to the independent judgment of his supervisors as well as clearly subordinate to his primary professional responsibilities. Similarly, although Hirst substitutes for the Principal periodically, there is no evidence that he has exercised substantial supervisory authority in that capacity.

With respect to Hirst's alleged managerial responsibilities, although he sits in on all principal's meetings and also certain Administrative Council meetings when he is invited to attend, because the record is clear that he has no decision making responsibilities or authority in the development of managerial policy at said meetings, or at any other time, except in the area of the establishment of student record keeping systems, the Commission is of the opinion that Hirst does not possess sufficient managerial authority to exclude him from the bargaining unit. In this regard, there is no evidence on the record that Hirst's continued inclusion in the bargaining unit will in any way conflict or interfere with the performance of his recently assigned duties.

#### ASSISTANT ATHLETIC DIRECTOR FOR GIRLS' SPORTS.

The District contends that the position of Assistant Athletic Director for Girls' Sports, presently occupied by Lois Wolf, should be excluded from the unit as managerial/supervisory. The Association on the other hand, contends that the position is largely advisory and clerical in nature.

The position was created in response to the growth in girls' sports and supplements the Athletic Director position which was excluded from the unit by previous Commission action pursuant to a stipulation of the parties. 2/ An examination of the Assistant's job description reveals the position to be under the direct and immediate supervision of the Athletic Director and largely created for that person's convenience.

Accordingly, Wolf spends sixty percent of her time in regular teaching duties, with the remaining time devoted to coordination of facilities and personnel in the scheduling and operation of girls' athletic events, preparation of budget items for presentation to the Athletic Director, making recommendations to the Athletic Director regarding coaching assignments, and such other duties as the Athletic Director may assign.

It is clear that the primary responsibility for the appointment of coaches lies with the Principal and Athletic Director, and that recommendations by Wolf are treated by the Principal no differently than recommendations from other staff members. Wolf is responsible for

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2/ Whitefish Bay Public Schools (10799) 2/72.

scheduling officials at girls' athletic events, but the contract is signed by the Athletic Director, who retains the ultimate responsibility for such contracting.

It is equally clear that primary responsibility for budget preparation lies with the Principal and Athletic Director. The Athletic Director actually formulates the budget for presentation to the principal, and individual coach's requests are submitted directly to him. All purchases are made by the Athletic Director, and he signs all purchase orders.

On the basis of the foregoing the Commission concludes that the Assistant Athletic Director of Girls' Sports does not exercise sufficient supervisory or managerial authority to be excluded from the bargaining unit.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

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