

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
AFSCME LOCAL 727C, WISCONSIN COUNCIL 40
Involving Certain Employees of
MENOMONIE SCHOOL DISTRICT

Case 59
No. 64125
ME-1123

Decision No. 14738-D

Appearances:

Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 318 Hampton Court, Altoona, Wisconsin 54720, appearing on behalf of AFSCME Local 727C, Wisconsin Council 40.

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**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT**

On October 28, 2004, AFSCME Local 727C, Wisconsin Council 40 (Union) filed a petition with the Wisconsin Employment Relations Commission seeking to clarify a support staff bargaining unit of Menomonie School District (District) employees it represents for purposes of collective bargaining by including the positions of Payroll Coordinator and Student Services Coordinator.

Hearing on the petition was held on April 20, 2005, in Menomonie, Wisconsin, before Commission Chair Judith Neumann. At the outset of the hearing, the parties stipulated on the record that the Payroll Coordinator should be added to the bargaining unit and this stipulation is incorporated in to our Order, below. Evidence was presented as to the Student Services Coordinator and both parties filed written arguments on or before June 15, 2005.

No. 14738-D

The School District contends that the Student Services Coordinator is a supervisor who therefore cannot be included in the bargaining unit, while the Union contends that the position lacks sufficient indicia of supervisory authority to warrant such exclusion.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The District is a municipal employer with offices at 215 Pine Avenue, N.E., Menomonie, Wisconsin.

2. The Union is a labor organization that serves as the exclusive bargaining representative of a unit described in the Recognition clause of the most recent collective bargaining agreement as “all regular full-time and regular part-time clerical and food service, excluding all supervisors, managers.”

3. At the time of the hearing in this case the District employed a District Administrator and five additional managerial employees at its Pine Avenue central office, as well as a high school principal, a middle school principal, and six elementary school principals. Prior to January 2004, four of the five central office managers were assisted in their departmental duties by an “executive assistant” or a “coordinator” who was excluded from the bargaining unit. Until June 2004, the Assistant Superintendent for Student Services, a position held since the 1999-2000 school year by Lynne Maslowski, was not assigned any such non-bargaining unit assistant or coordinator. Until June 2004, all central office managerial personnel directly supervised at least two members of the Union’s bargaining unit.

4. Assistant Superintendent Maslowski is responsible for managing/supervising 14 professional staff members, including all special education professionals and six school principals. Prior to January 2004, she was also responsible for managing/supervising two bargaining unit support staff positions, i.e., the Student Services Secretary (Patti Millar) and the Special Education Secretary (Connie Karr).

The Student Services Secretary, among other duties, provided a range of clerical support services to the Assistant Superintendent for Student Services, and had primary responsibility for gathering, maintaining, and preparing reports regarding general student records as well as summer school schedules/enrollment, etc., and coordinating and assisting kindergarten screening and registration. The position required familiarity with certain software programs in which the School District interfaced with state and federal officials, but was not primarily responsible for the student census or “Friday counts” that figure prominently in the amount of state funding the District received nor for special education-related software and recordkeeping. The position required successful interaction with employees, especially clerical employees, throughout the District in order to gather data and prepare reports.

The Special Education Secretary, among other duties, also provided clerical support services to the Assistant Superintendent for Student Services and had primary responsibility for special education data gathering and recordkeeping, for handling many of the reports and records required by state and federal education officials, and for the “Friday counts” that affect the District’s receipt of state funding. The position required successful interaction with employees, especially clerical employees, throughout the District in order to gather data and prepare reports. Over the years, the position required increasingly greater use of and skill with software recordkeeping programs that were used to comply with state and federal reporting requirements.

5. In the fall of 2004, District officials learned that some of the data the District had submitted to state officials regarding student enrollment was inaccurate in significant ways. Assistant Superintendent Maslowski investigated the situation and discovered that the problem resulted at least in part from the fact that then Special Education Secretary Connie Karr was not skilled in the use of the appropriate recordkeeping software and had gathered the data and prepared the reports largely “by hand.” Ms. Maslowski disciplined Ms. Karr for the inaccurate reporting and Ms. Karr shortly thereafter resigned her employment with the District. While Ms. Maslowski herself is acquainted with the software recordkeeping and reporting programs that the District uses to interface with state officials, she concluded that her level of skill and familiarity with those programs did not permit adequate oversight of the accuracy of the work performed by the Special Education Secretary in that regard, which contributed to the situation that arose in fall 2004. Ms. Maslowski also concluded that it would not be effective for one bargaining unit support staff position, regardless how skilled, to direct and supervise the work of another bargaining unit position.

6. As a result of the situation described in Finding of Fact 5, above, the District in approximately January 2004 began the process of reorganizing the clerical support staff positions within the Student Services Department. Effective June 2004, the District eliminated the positions of Student Services Secretary and Special Education Secretary and created the positions of Coordinator for Student Services (at issue in the instant case) and Special Education/Student Services Secretary.

7. Under the reorganization, the Coordinator for Student Services reports directly to the Assistant Superintendent for Student Services. The Coordinator’s primary responsibility is the maintenance of accurate student records and preparation of accurate student services reports. The Coordinator has many of the same responsibilities previously performed by the Student Services Secretary, but, among other added duties, the Coordinator oversees the monthly, quarterly, and annual student services reports, including the “Friday counts” that figure in the District’s receipt of state funding. The Coordinator’s job requires a high level of skill in using various recordkeeping and reporting software programs in order to ensure accurate and timely transmission of student data to comply with state and federal laws. One of the newly-added job duties set forth on the Coordinator’s job description is:

Supervise special education secretary by following job performance standards, identifies strengths and areas for growth for the student services secretary and provides coaching, evaluation, and plans of action to meet expected performance standards.

8. According to the job description for the Special Education/Student Services Secretary, the position reports to and works “under the direction of” the Assistant Superintendent for Student Services. The Secretary provides a range of clerical support services to the Assistant Superintendent for Student Services, including acting as a receptionist and answering the telephone. Among other recordkeeping and record-preparing duties, this position has primary responsibility for certain special education recordkeeping and reporting. This position is also responsible, under the Coordinator’s oversight, for gathering data, maintaining records, and preparing various state and federally-mandated reports, including those associated with the “Friday counts.” There is no dispute that the Secretary is a bargaining unit position.

9. The District transferred Patti Millar, formerly the Student Services Secretary, into the position of Coordinator of Student Services, and transferred Nicole Buss, formerly a receptionist in the central office, into the position of Special Education/Student Services Secretary.

10. The District’s hiring practices generally involve group interviews followed by a consensus decision-making process among the interview team. In filling most positions, the interview team includes a mix of management/supervisory and bargaining unit personnel. For example, Ms. Millar as a bargaining unit member participated in the hiring process in which Nicole Buss was selected to fill the receptionist position that she held before transferring into the Secretary position.

11. The District’s disciplinary procedures generally are initiated by an immediate supervisor, who typically begins the process by reporting an incident or situation to Human Resources Director John O’Connor. While an immediate supervisor has authority to issue oral warnings without consulting superiors, discipline beyond that level is always preceded by consultation with the Mr. O’Connor and a review of the employee’s prior disciplinary record. Mr. O’Connor also participates in the investigatory interviews that precede any discipline greater than a written warning. The District’s disciplinary process often involves group consultation and discussion and the outcome is usually a matter of consensus. Where an immediate supervisor has recommended a particular form of discipline, the supervisor must (and generally does) persuade Mr. O’Connor that such discipline is appropriate under the circumstances.

12. Although no specific incidents have occurred regarding Ms. Buss, Ms. Millar’s degree of autonomy in hiring and discipline over Ms. Buss is consonant with the District’s general practices as described in Findings of Fact 10 and 11, above. When Ms. Buss reached the end of the thirty day trial period after transferring from receptionist to the Secretary

position, Mr. O'Connor and Ms. Maslowski consulted with Ms. Millar about Ms. Buss' performance and all three concurred that it had been satisfactory.

13. Ms. Millar approves Ms. Buss' leave requests by signing the request and authorization form in triplicate. Although the District generally disfavors overtime, Ms. Millar on one occasion while training Ms. Buss autonomously authorized a small amount of overtime for Ms. Buss.

14. Ms. Millar has trained Ms. Buss, directs and oversees Ms. Buss in the performance of her work and helps Ms. Buss prioritize tasks. Ms. Millar meets with Ms. Buss weekly to review her work product and discuss ongoing and upcoming projects and keeps an electronic log of those meetings which Ms. Millar uses for evaluation purposes.

15. Ms. Millar is responsible for evaluating Ms. Buss and at the time of the hearing had prepared one mid-year written evaluation setting forth goals and assessing performance. Ms. Millar drafted the evaluation herself but Ms. Maslowski reviewed it and offered a few minor suggestions before the document was provided to Ms. Buss. Ms. Maslowski also "sat in on" the evaluation conference between Ms. Millar and Ms. Buss, although Ms. Maslowski might discontinue that practice as Ms. Millar gets more supervisory experience.

16. Ms. Millar and Ms. Buss work side by side and only a short distance down the hall from Ms. Maslowski's office.

17. Ms. Maslowski along with Ms. Millar meet regularly with bargaining unit clerical employees from around the school district to discuss problems/procedures connected with gathering and maintaining student records and other data. While interpersonal communication problems sometimes arise between Ms. Millar and bargaining unit employees who are responsible for gathering and submitting various records and reports to central office, neither Ms. Millar nor Ms. Maslowski have supervisory authority over those employees.

18. Ms. Millar spends the vast majority of her time performing tasks associated with the recordkeeping and report preparation functions of her job and to a lesser extent in training, assisting, and directing Ms. Buss in the performance of similar duties. Ms. Millar spends a very small portion of her time supervising Ms. Buss.

19. The bargaining unit wage range is \$11.72 per hour to \$13.45 per hour, and employees progress through that wage structure in regular increments over an 18-month period. The salary range for Ms. Millar's Coordinator position is \$37,100 to \$43,000, in regular increments over a five-year period. At the time of the hearing, Ms. Millar was paid at the beginning of that pay range, which translates into an hourly figure of \$17.40.

20. The Coordinator of Student Services does not have supervisory authority in sufficient combination and degree to be a supervisor.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The Coordinator of Student Services is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

1. Pursuant to the parties' stipulation, the Payroll Coordinator is included in the bargaining unit represented by the Union.

2. The Coordinator of Student Services is included in the bargaining unit represented by the Union.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of September, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Commissioner Paul Gordon did not participate.

MENOMONIE SCHOOL DISTRICT

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

The sole issue in this case is whether the Coordinator of Student Services, presently Patti Millar, is a supervisor within the meaning of the law and therefore ineligible for membership in the bargaining unit.

A supervisor is defined in Sec. 111.70(1)(o)1, Stats., as follows:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

As both parties recognize, when applying this statutory definition, we consider the following factors:

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 alleged supervisor is paid for his/her skill or for his/her supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. TOWN OF BROOKFIELD, DEC. NO. 26426 (WERC, 4/90).

Not all of the above factors need to reflect supervisory status for an employee to be found a supervisor. Rather, in each case, the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employee occupying the position is a supervisor. CITY OF GREEN BAY (POLICE DEPARTMENT), DEC. NO. 31417 (WERC, 8/05); BAYFIELD COUNTY (HWY. DEPARTMENT), DEC. NO. 31291 (WERC, 3/05).

Applying the foregoing seven factors in this case yields a mixed picture.

Looking at Factor 1, Ms. Millar has not encountered any hiring decisions, as Ms. Buss transferred into the Secretary position as a result of the contractual posting procedure. As to potential hiring authority, the District's consensus-based decision-making personnel processes, which involve interview committees that include bargaining unit members, of necessity lessens the hiring authority that resides in any individual who participates in the process.

Similarly, as to other aspects of Factor 1, the District employs a group-oriented and consensus-based process for disciplinary purposes. While there is no reason to doubt the testimony of District officials that Ms. Millar would have the same degree of disciplinary authority over Ms. Buss that any other District supervisor has, the District leaves little autonomous authority beyond oral warnings with any of its individual supervisors. Instead, the District has adopted a relatively non-authoritarian disciplinary system in which authority is diffused beyond any particular individual supervisor. The Human Resource (HR) Director plays a leadership role in the investigatory and decision-making process in all serious disciplinary matters (those beyond a written warning) and is actively involved even in decisions regarding written warnings. This is not to say that the HR Director acts alone or imposes his will upon other supervisors, but rather acts as a resource and gives considerable regard to the initiating supervisor's point of view. As the HR Director testified, it is up to the initiating supervisor to persuade him (the HR Director) that their recommendation as to discipline is correct, but it is generally the case that he is in fact persuaded. However, as was true for hiring authority, the use of a consensus-type process for decision-making dilutes the individual authority of those who participate. By way of example, the decision to retain Ms. Buss in the Secretary position at the conclusion of her 30 day trial period, as opposed to transferring her back to her receptionist position, was a process of consultation among Ms. Millar and two District managers, Assistant Superintendent Maslowski and Human Resource Director O'Connor.

As to Factor 2, Ms. Millar clearly has played a major role in training Ms. Buss and overseeing the reliable and accurate maintenance of District records and compliance with crucial state and federal reporting requirements. Such oversight is fundamentally what Assistant Superintendent Maslowski was seeking in creating the Coordinator position and in itself is more consistent with a leadworker role than a supervisor. Ms. Millar also assisted in reorganizing the job descriptions for her own position and that of the Secretary in order to increase the efficiency of the production process. She regularly communicates with Ms. Buss about her work load, how she is prioritizing her work, and what assistance or resources she needs. On the other hand, the job description for both the Coordinator and the Secretary each state a reporting relationship directly to the Assistant Superintendent for Student Services and it

is clear that a fundamental duty of both positions is to provide various forms of clerical support to the Assistant Superintendent. There is no indication that the Secretary reports to or provides assistance to the Coordinator. While the image is blurred, the relationship between Ms. Millar and Ms. Buss seems more analogous to that of a lead worker and a trainee than to a supervisor and a subordinate.

Factor 3 weighs strongly against a finding of supervisory status. Not only is Ms. Buss the only ostensible subordinate of Ms. Millar, but the Assistant Superintendent obviously carries considerable supervisory authority over both positions.

Regarding Factor 4, the nearly \$4.00 per hour pay differential between Ms. Millar and bargaining unit employees, at first blush seems so substantial as to support a supervisory relationship. In the circumstances of this case, however, we conclude otherwise. It appears instead that the District had a genuine need to consolidate responsibility for certain recordkeeping and reporting work in the hands of someone with Ms. Millar's capabilities. While Assistant Superintendent Maslowski feels she lacks sufficient familiarity with the software programs to adequately oversee the accuracy of the District's reports, it appears that her central concern involved the "Friday count" reports that affected access to state funding and that she addressed this concern by reassigning that work to Ms. Millar. The current reality is that many managers and supervisors lack hands-on familiarity with all of the technology used in their subordinates' day to day work. That does not in and of itself undermine the supervisor's ability to hold the subordinate accountable for reliable outcomes or competent work product. Thus, given the rather minimal amount of true supervisory work Ms. Millar performs (owing in part to having only one subordinate), and given the crisis that engendered the reorganization, we conclude that the differential is much more likely to reflect the high value the District places upon Ms. Millar's skill and reliability in handling the sophisticated software programs on which the District's funding in no small measure depends.

Similarly, Factors 5 and 6 taken together provide little support for Ms. Millar's supervisory status. Again, having only one subordinate tends to minimize the amount of time Ms. Millar would spend supervising an employee when compared with the amount of her work day that is spent supervising the work activity of providing clerical support to the Student Services Department. Weighing in favor of her supervisory status is the fact that Ms. Millar conducts a regular weekly meeting with Ms. Buss to review her work situation. Further, Ms. Millar keeps an electronic journal of these discussions. Ms. Millar has also prepared an extensive written mid-year evaluation of Ms. Buss' work performance which, although reviewed and "coached" by Ms. Maslowski and Mr. O'Connor, was prepared largely independently. Ms. Millar has autonomously, though only on one occasion, authorized overtime for Ms. Buss and also regularly approves her vacation and other leaves. Overtime authorization is a relatively rare event, however, as the District tends to discourage overtime as a general rule. Nonetheless, it is apparent from Ms. Millar's job description and the record in this case that these supervisory tasks consume a relatively small portion of her work time. By and large Ms. Millar spends her time providing direct, albeit highly skilled and highly reliable, clerical support service in aid of the District's Student Services Department.

Finally, as to Factor 7, we recognize that the District has genuinely endeavored to give Ms. Millar as much independence and autonomy in supervising Ms. Buss as the District gives to its first-level supervisors in general. As noted in the preceding section, that independence is reflected principally in her evaluation of and authorizing overtime and leave for Ms. Buss. However, as discussed in connection with Factor 1 above, the District, perhaps quite laudably, operates in a consensus decision-making mode that is somewhat counter to a claim that Ms. Millar has a great degree of autonomy in supervising Ms. Buss. This is especially so where Ms. Millar and Ms. Buss perform similar work and both report to and are largely directed by the Department manager, Assistant Superintendent Maslowski.

It is apparent from the foregoing discussion that the Commission finds that Ms. Millar's position carries some indicia of genuine supervisory authority but ultimately not enough in combination and degree to warrant exclusion from the bargaining unit. She lacks significant independent disciplinary authority (i.e. oral warning only) and her authority to effectively recommend hiring and serious discipline is diluted by the consensus model the District utilizes. She directs the work of only one employee and the Assistant Superintendent provides a significant supervisory presence in office where Millar and Buss work. She spends little time performing supervisory duties and is compensated for her skills rather than her authority.

In reaching this conclusion, we distinguish this situation from those in JACKSON COUNTY, DEC. NO. 17828-G (WERC, 11/96) and CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97), to which the District has cited. The JACKSON COUNTY situation involved an employer creating an office manager position in order to provide an on-site supervisory presence for two clerical employees who otherwise were largely unsupervised. The District in this case had no similar and obvious supervisory need, as Ms. Buss worked in the District's central office along with several managerial and supervisory employees, including the Assistant Superintendent of her department. In addition, unlike Ms. Millar in the instant case, the office manager in JACKSON COUNTY did not perform similar work to the employees he supervised and importantly had clear autonomous authority to impose discipline as significant as suspensions. In CHIPPEWA COUNTY, the Administrative Assistant/Child Support had participated in more than 20 hiring interviews in her supervisory role and her recommendation had been followed on all but two occasions. She also supervised several employees in her department, not just one, which involved preparing performance evaluations and recommendations regarding passing probation. As in JACKSON COUNTY, the Commission found it significant that the Administrative Assistant was the only supervisory presence in the work location applicable to five of the employees she supervised. Finally, the Commission was influenced by the fact that the Administrative Assistant had regularly substituted for the department manager during some leaves of absence lasting several months. CHIPPEWA COUNTY, DEC. NO. 10497-A, at 60.

Instead we see the Coordinator position here as more akin (though not entirely analogous) to the Confidential Secretary/Office Supervisor position that we found not supervisory in BAYFIELD COUNTY, DEC. NO. 31291 (WERC, 3/05). As here, the position at issue in BAYFIELD COUNTY supervised only one employee and performed evaluations of that employee, but for the most part worked side by side with the subordinate performing

essentially the same work. As here, the department had another more significant supervisory presence at the work site. Also as here, the BAYFIELD position had little genuinely autonomous supervisory authority.

In concluding that Ms. Millar lacks sufficient overall supervisory authority to be excluded from the bargaining unit, we recognize the District's concern for retaining and appropriately compensating an individual whose skills and responsibilities are so important to the District's fulfillment of its obligations. Since including a new position in the bargaining unit does not necessarily mandate application of any of the existing contractual requirements, the District's concerns ultimately must be addressed in the bargaining process and if necessary in interest arbitration.

Dated at Madison, Wisconsin, this 8th day of September, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Commissioner Paul Gordon did not participate.

