

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

GERMANTOWN AREA SCHOOLS, JOINT DISTRICT :  
NO. 1, VILLAGE OF GERMANTOWN, TOWNS OF :  
GERMANTOWN, RICHFIELD, JACKSON AND POLK :

Case V  
No. 19333 ME-1215  
Decision No. 14762

For Clarification of Bargaining Unit of :  
Certain Employees of :

GERMANTOWN AREA SCHOOLS, JOINT DISTRICT :  
NO. 1, VILLAGE OF GERMANTOWN, TOWNS OF :  
GERMANTOWN, RICHFIELD, JACKSON AND POLK :  
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Appearances:

Mulcahy and Wherry, S.C., Attorneys at Law, by Mr. Michael L. Roskar,  
appearing on behalf of the Municipal Employer.

Mr. Robert W. Lyons, Representative, appearing on behalf of District  
Council 40, AFSCME, AFL-CIO.

ORDER CLARIFYING BARGAINING UNIT

The above-named Municipal Employer having filed a petition with the Wisconsin Employment Relations Commission on July 3, 1975, requesting clarification of an existing certified collective bargaining unit of its employees represented by District Council 40, AFSCME, AFL-CIO 1/; and hearing having been held in the matter at Milwaukee, Wisconsin, on August 8, 1975, Hearing Officer Marshall L. Gratz appearing on behalf of the Commission; and the Commission having considered the evidence, arguments and briefs and being fully advised in the premises, makes and issues the following

ORDER


That the positions of Head Cook shall be, and hereby are, included in the collective bargaining unit consisting of all regular full-time and part-time employees of the Germantown Joint School District No. 1, 2/ excluding managerial employees, professional employees, supervisory employees, confidential employees, seasonal employees, and employees who

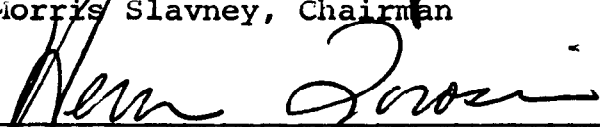
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- 1/ While the Municipal Employer's request was filed in the form of a petition for declaratory ruling, the Commission has treated same as a petition for unit clarification.
- 2/ The name of the Municipal Employer may have changed from Germantown Joint School District No. 1 (as is noted in the Certification of Representatives) to the above-captioned name under which it filed the instant petition. Until a formal request for amendment of the certification is received, however, the reference in the unit description above will remain unchanged.

work fifteen hours per week or less during either the school year or the calendar week.

Given under our hands and seal at the  
City of Madison, Wisconsin this 6th  
day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

On March 18, 1975, following an election conducted by the Commission, District Council 40, AFSCME, AFL-CIO, referred to herein as the Union, became the certified representative of the collective bargaining unit set forth in the attached Order. In accordance with a pre-election agreement between the District and the Union, four challenged ballots which did not affect the result of the election were not determined, and the District now has requested that the Commission clarify the bargaining unit status of the four voters whose ballots had been challenged, namely, two Head Custodians and two Head Cooks.

During the hearing, the District, without objection from the Union, amended its petition so as to remove from consideration the position of Head Custodian. Thus, the only remaining issue herein concerns the status of the Head Cook positions.

The District contends that the Head Cooks should be excluded from the unit as either supervisors or managerial employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act. The Union, on the other hand, asserts that the positions should be included in the unit as employees.

The District employs two Head Cooks, Lorna Backes at its Middle School and Laura Neidhardt at its High School. It is undisputed that the duties of the two are similar. Each works weekdays, seven and one-half hours per day, in a kitchen, with one Assistant Cook working the same hours and three Cook Helpers working from two to five hours per day each. The overall function performed by the kitchen and its personnel is the preparation and service of daily noon lunches to students.

The Head Cooks are paid between \$2.82 and \$2.92 per hour compared with \$2.00-2.05 for Cook Helpers and approximately \$2.50 for Assistant Cooks.

Each Head Cook spends, on the average, six and one-half hours, or about 85% of her normal work day, performing food preparation and food serving work. The balance of her time is spent in preparing menus, monitoring and controlling inventories, ordering paper and food supplies, and engaging in certain duties alleged to be supervisory in nature with respect to the Assistant Cook and Cook Helpers in her kitchen.

While the Head Cooks plan menus and order food and paper supplies from vendors independent of direct oversight and make effective recommendations concerning meal pricing and equipment purchases, all such functions and decisions are performed and made within the parameters of a Budget which the head Cook does not prepare or significantly influence. Such responsibilities are more or less routine, and therefore, insufficient to warrant their exclusion as managerial employees.

For an average of about fifteen minutes per day, the Head Cooks engage in a variety alleged to be of a supervisory nature activity. Each has made nine recommendations after telephone interviews with all of the applicants supplied on a list from the District Business Manager's office. Their recommendations have been followed in the few cases of turnover occurring in recent years. In cases of absences, kitchen employees call their head Cook, who is then responsible for calling in a replacement, if she deems one necessary. Substitutes are selected from among applicants supplied by the Business Manager's office or, failing that, from other persons the head Cook knows. Each Head Cook initially organized the work within the kitchen and, where needed, each provides work direction and assignment in the kitchen. However, the present employees are so well attuned to the kitchen routine that they are aware of their tasks and also orient new employees, without significantly different training input from the head Cook. On one occasion when it was deemed necessary, one of the

Head Cooks verbally reprimanded an employee for being consistently tardy. If a persistent disciplining problem arose they would be expected to recommend discipline to the school principal.

According to the District's formal organizational plan, as reflected in administrators' individual employment contracts, the District Business Manager is the Head Cook's immediate supervisor and is responsible for the food service operation to the implied exclusion of other administrators. However, the Business Manager's office is geographically removed from the kitchen, and in practice the principals in the two schools actually function as their supervisors.

The Head Cooks are not, in practice, the sole source of supervision of the other kitchen employees because of the role played by the School Principals. 3/ Despite the exclusivity of the Business Manager's formal organizational responsibility for the school kitchens, Backes testified that her Middle School Principal "very often" visited the kitchen "first thing in the morning" and asked Backes "how things were going" and discussed any problems Backes was experiencing. Backes and her Principal discussed her needs for repair or replacement of equipment and difficulties Backes was having with particular vendors or in obtaining needed substitutes on a given day and similar matters. Pursuant to such discussions, her Principal promised to "see what he could do" about the needs for major appliance purchase, arranged for the services of needed equipment repair personnel, and provided additional personnel to work in the kitchen when adequate substitutes were unavailable or when other emergencies created an understaffed situation in the kitchen. Backe's Principal also spoke with the other personnel in the kitchen about the operation of the kitchen as a whole, the procedure followed in the lunch line and the behavior of students in the line. When the Principal had particular concerns about the performance of an employee or about the way the lunchroom was operating, he expressed them to Backes, and Backes saw to it that adjustments were made accordingly. For example, the Principal informed Backes that one of the kitchen employees needed a deodorant and was improperly touching the food on students' trays in the checkout line. On another occasion, the Principal told Backes that the students were not being processed through the food lines fast enough. Backes further stated that, if she were ever to recommend discipline of an employee in her kitchen, such recommendation would be made to her Principal. She also stated that if a problem came up in the kitchen that she could not deal with, she would refer it to the Principal and only in his absence to the District Business Manager. She added that both she and the other kitchen employees considered the Principal to be their immediate supervisor.

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3/ In this regard, the instant case differs materially from the following cases relied upon by the District. North Fond du Lac Joint School District 11, Dec. No. 11182 (7/72) ("... there is no intervening layer of supervision between the Chief Maintenance Man and the District Administrator who is the Chief Administrative Officer of the School District."); Gibraltar Area Schools Board of Education, Dec. No. 11339 (10/72) ("There is no intermediate level of supervision between the Administrator and the principals and various department heads and the ratio of supervisors to employees indicates that the department heads operate with a great deal of autonomy."); Joint School District #4, City of Monona [etc.], Dec. No. 10159 (2/71) (All four [Head Cooks], while performing the work similar to those employees supervised, have the sole responsibility for such supervision . . .). cf. LaCrosse Area Joint School District No. 5, Dec. No. 14653 (5/76) (emphasis placed on role of Principal in concluding that Cook Supervisors and Head Cooks are employees properly included in the unit).

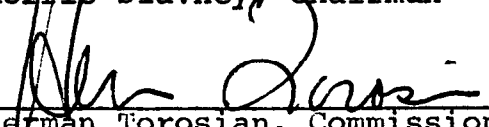
In view of the large percentage of the Head Cook's time spent on food preparation and service duties, the small number of personnel in each kitchen, the limited amount of and degree of supervisory activity engaged in with respect to the kitchen employes and the proximity and availability of the Principal to provide supervision and an intermediate level of management between the central business office and the kitchens, we conclude that the Head Cooks are, at most, lead workers and not "supervisors" within the meaning of Section 111.70(1)(b) and (c)1 of the Municipal Employment Relations Act.

For the foregoing reasons, the Head Cooks have been held to be employes included within the certified unit.

Dated at Madison, Wisconsin this 6th day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Herman Torosian, Commissioner