

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case II
No. 20770 ME-1358
Decision No. 15407

Ms. Donna Ullman, Regional Coordinator, and Mr. Dennis Eisenberg, Executive Director, appearing on behalf of the petitioning Association.

Mr. Kenneth Cole, Representative, appearing on behalf of the Municipal Employer.

The Kewaskum Education Association, affiliated with Cedar Lake United Educators, Wisconsin Education Association Council, NEA, hereinafter the Association, having filed a petition with the Wisconsin Employment Relations Commission, on August 30, 1976, requesting the Commission to clarify a voluntarily recognized collective bargaining unit of teachers with respect to the inclusion or exclusion of the positions of school social worker and school psychologist; and hearing in the matter having been held on September 29, 1976, at West Bend, Wisconsin, before Sherwood Malamud, Examiner; 1/ and the parties having submitted briefs through January 17, 1977; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises and being satisfied that the position of school social worker be included in the unit on the basis of the Municipal Employer's agreement to do so, and that the school psychologist be excluded from the unit on the basis of his status as a supervisor within the meaning of Section 111.70(1)(o)(1) of the Municipal Employment Relations Act, makes and issues the following

No. 15407

ORDER

That the position of school social worker be included in the teacher collective bargaining unit, and that the position of school psychologist be excluded from said unit.

Given under our hands and seal at the City of Madison, Wisconsin this 5th day of April, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

The Association seeks to accrete the school social worker and the school psychologist to the above unit. 2/ At the outset of the hearing the Municipal Employer agreed to include the school social worker in the unit.

The Kewaskum school district employs 115 teachers who teach 2120 students. In the late 1960's the Municipal Employer recognized the Association as the exclusive bargaining representative of teachers employed in its school district. The Municipal Employer and the Association have entered into several collective bargaining agreements during this period, the last of which extended from July 1, 1975, through June 30, 1976, and in which appears the following recognition clause:

"SECTION I - RECOGNITION CLAUSE

The School Board recognizes the Kewaskum Education Association affiliated with the NEA, WEA, and CLUE as the exclusive bargaining agent for all teachers, whether or not members of the Association, hereinafter referred to as 'employees' or 'teachers.' The provisions of the contract shall be applicable to all said employees, exclusive of substitute teachers, aides, those excluded by Sec. 111.70 of the Wisconsin Statutes and those staff members not holding a teacher's certificate."

Included in the above unit are guidance counselors, library, health and audio-visual coordinators. Excluded from said unit are the district administrator and the principals of the six elementary schools, one middle school and the assistant principal and principal of the high school.

Although the Association was recognized as the exclusive bargaining representative of teachers in the late 1960's, the position of school psychologist was established on the Kewaskum staff in 1972. Prior to that date, the Employer received such services through CESA 16. The incumbent, David Vande Vrede, joined the Kewaskum faculty in 1974.

Vande Vrede functions as the school psychologist; a position which occupies approximately 80% of his time, and as the special education program designee, which occupies the remaining 20% of his time. In a report prepared for the Kewaskum Board of Education dated April 23, 1976 Vande Vrede described his duties and analyzed his utilization of time as follows:

1. As Special Education Program Designee, Vande Vrede:
 - a. Writes an annual plan and reports which are submitted to the Department of Public Instruction.
 - b. Prepares reports on all children enrolled in special education programs in the District for the educable mentally retarded; special learning disabilities, trainable mentally retarded, emotionally mentally retarded and those students who work with the District's two speech therapists.

2/ Petitioner agreed to an election in an all-inclusive professional unit should the Commission find accretion inappropriate in this case.

- c. Sees approximately 20 students along with the school social worker in a group setting.
 - d. Prepares and administers budget for special education programs. (This budget is submitted directly to the District Administrator for submission to the Board of Education).
 - e. Prepares any other reports requested by the Department of Public Instruction relative to special education programs.
 - f. Makes transportation arrangements for four students enrolled in out-of-district programs.
 - g. Prepares and revises forms for the screening and referral process and updates these forms to reflect changes in state law.
 - h. Advises 10 special education personnel concerning students and their problems. Personnel in the special education program include the social worker and two speech therapists as well as the special education teachers.
2. As school psychologist, Vande Vrede:
- a. Evaluates all students referred to him. In the 1975-1976 school year, Vande Vrede evaluated approximately 121 students. A typical evaluation consists of administration of three hours of testing, two hours of test scoring and interpretation and at least two hours of writing findings and recommendations for the student.
 - b. Coordinates the multidisciplinary team mandated under ch. 115, Stats.
 - c. Meets with a class of four emotionally retarded children in a weekly therapy session and with students referred to the school psychologist by teachers.
 - d. Participates in numerous meetings with parents and teachers concerning students.
 - e. Re-evaluates students in special ed programs. Ch. 115, Stats, mandates such re-evaluation at least once every three years.
 - f. Plans for new programs and services.
 - g. Meets monthly with county agency administrators to share information and services concerning programs and resources available for exceptional children.
 - h. Types the multidisciplinary team reports since he is not provided with secretarial services.
 - i. Sets up pre-school screening programs for new kindergarten students.
 - j. Conducted a trial screening program for three year olds.
 - k. Re-evaluates students in a special education program at least once per year to determine academic progress,

suitability of the placement, and the effectiveness of the programs.

Vande Vrede works an additional fifteen days beyond the work days provided in the teachers' agreement.

As for Vande Vrede's supervisory responsibilities, the record establishes that the school psychologist in the 1975-1976 school year evaluated eleven professional staff in the special education program, including the special education teachers, the social worker and the speech therapists. Although these evaluations were reduced to writing by Vande Vrede in January, 1976 many of the evaluations were not discussed with or shown to the teachers nor were any of the evaluations placed in teacher files until the date of the hearing in September, 1976. However, Vande Vrede made an oral presentation of his evaluations to the District Administrator and to the Board of Education in the spring of 1976 prior to the issuance of contracts for the 1976-1977 school year. During the 1974-1975 school year, special education teachers and other personnel were evaluated by the Director of Elementary Education and Principal of the Kewaskum Elementary School, Mr. Richard E. Zarling.

Special education teachers are located in different school buildings. As a result, these teachers are subject to the general supervision of the appropriate building principal in areas of student discipline, sick leave, etc. Furthermore, building principals from time to time enter special education classes located in their respective buildings and observe special education teachers. However, the record is clear that as of the 1975-1976 school year, the evaluation of special education personnel was the sole responsibility of the school psychologist.

Vande Vrede participates in the hiring interviews for teachers and other professionals in the special education program. However, if Vande Vrede is not available, the administrator conducts the interview by himself and the administrator has hired teachers for the special education program who were not interviewed nor even introduced to the school psychologist prior to their being hired. Vande Vrede is paid approximately, \$14,000 per annum. In determining issues of supervisory status, the Commission considers 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 supervisor is paid for his skill or for his supervision of employees.
- "5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
- "6. Whether the supervisor is a working supervisor or whether he stands a substantial majority of his time supervising employees.
- "7. The amount of independent judgment and discretion exercised in the supervision of employees." 3/

3/ City of Milwaukee (Engineers) (6960) 12/64.

In applying the above criteria, the Commission has stated that:

"It is not necessary that all of those factors be present in order to find an employe to be a supervisor, but rather it is necessary that those factors should appear in sufficient combination to clearly establish that the employe is a supervisor." 4/

The School Psychologist's most significant supervisory responsibility is his evaluation of the special education faculty. Petitioner argues that Vande Vrede's evaluations are less formal than those made by building principals and are of little significance in light of their non-inclusion in teacher personnel files. Finally, Petitioner argues that Vande Vrede has been vested with the appearance of supervisory authority without any substance to that authority.

The record establishes, however, that the function of evaluating special education faculty was solely the responsibility of Vande Vrede during the 1975-1976 school year, and that it will be solely his responsibility in the 1976-1977 school year. On the basis of all of the foregoing the Commission finds that the school psychologist is a supervisor and therefore, he is excluded from the above unit.

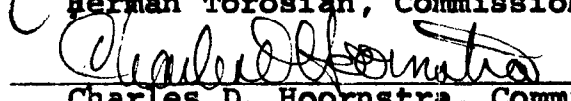
Dated at Madison, Wisconsin this 5th day of April, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


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4/ Ibid. City of Eau Claire (Public Library); City of New London (12170)
9/73.