

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

:

NORTHWEST UNITED EDUCATORS :

: Case 7

Involving Certain Employes of : No. 39547 ME-220

: Decision No. 15794-D

AMERY SCHOOL DISTRICT :

:

Appearances:

Ms. Melissa Cherney and Ms. Donna Weikert, Staff Counsel, Wisconsin Education Association Council, 33 Nob Hill Road, P.O. Box 8003, Madison, WI 53708, appearing for NUE.
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Richard J. Ricci, 715 South Barstow, Suite 111, P.O. Box 1030, Eau Claire, WI 54702-1030, appearing for the District.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

On October 20, 1987 Northwest United Educators filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit by including the positions of Community Education Coordinator and Computer/ Gifted and Talented Coordinator. The parties agreed to delay hearing in the matter pending attempts to resolve the matter. Hearing in the matter was held in Amery, Wisconsin on March 1, 1988 before Douglas V. Knudson, a member of the Commission's staff. A stenographic transcript of the hearing was received on April 29, 1988. The parties agreed to delay the filing of post-hearing briefs pending attempts to resolve the matter. The parties filed briefs by April 10, 1989. The Commission, being full advised in the premises, makes and issues the following:

FINDINGS OF FACT

1. The Amery School District, herein the District, is a municipal employer and has its principal offices at 115 North Dickey Avenue, Amery, WI 54001.
2. Northwest United Educators, herein NUE, is a labor organization and has its principal offices at 16 West John Street, Rice Lake, WI 54868.
3. Pursuant to an election conducted by the Commission, 1/ NUE was certified as the bargaining representative of all classroom teachers, Guidance Counselor, Nurse, Learning Disabilities Coordinator and non-supervisory Social Workers in the employ of Amery Joint School District No. 5, but excluding managerial, supervisory and confidential employes and all other employes.
4. On October 20, 1987 NUE filed a unit clarification petition with the Commission seeking the inclusion in the bargaining unit of the positions of Community Education Coordinator and Computer/Gifted and Talented Coordinator. The District, contrary to NUE, contends that the position of Community Education Coordinator is occupied by a managerial and supervisory employe and that the position of Computer/Gifted and Talented Coordinator is occupied by a

1/ Amery Joint School District No. 5, Dec. No. 15794-B (WERC, 5/78).

managerial employe.

5. Sharon Remund has held the position of Community Education Coordinator with the District since the position was created in July, 1984. The purpose of the Community Education program is to provide educational training, recreational, cultural and/or athletic programs and services for community members of all age groups, outside the regular curricular and extra curricular school district programs for pupils. Thirty-one (31) such programs were offered in the 1986-87 school year. During the 1984-85 school year Remund worked ten (10) hours per week to oversee the then existing program of classes being offered in Amery through the Wisconsin Indianhead Technical College, herein WITC. In the 1985-86 school year she began working with the newly created local Community Education Advisory Council composed of citizens representing a cross section of the community. The Council assesses the needs of the community and recommends programs and activities to meet those needs. Remund organized a series of three informational training sessions for the Council members. Since then, the number of programs offered locally through WITC has been expanded, a program was developed whereby certain undergraduate and graduate level college courses are taught in Amery through the University of Wisconsin - River Falls, and, a program offering classes using community resources has been initiated. During both the 1986-87 and 1987-88 school years Remund has been employed on a sixty percent (60%) contract as compared to a full time teacher.

6. With respect to the WITC classes, after receiving input from the Council, Remund assembles a list of potential classes to be offered in a given semester. Remund then contacts potential instructors and sets tentative schedules for the classes, following which she submits that information to WITC. WITC prepares a pamphlet, or flyer, to publicize those classes. If there are not sufficient enrollments for a particular class, Remund will cancel the class. She reviews forms completed by students when a class is finished. Based on those forms, she can decide not to use a particular instructor again. Remund collects some class fees and forwards those to WITC. In regards to college level courses, Remund advises the District's professional staff of the available courses. If there is sufficient interest in some of the courses, Remund works with the UW - River Falls to schedule those courses to be taught in Amery. Remund also arranges for other community education programs which are not UW - River Falls or WITC classes. Remund sets both the fees for the participants and sets salaries and executes contracts with the instructors whom she employs without the approval of anyone else. These programs are self-funding, i.e., the program's costs are covered by the participant's fees. On at least one occasion, Remund decided not to offer a course again, because she was unhappy with the previous instructor's performance and she was unable to find a replacement instructor.

7. The 1987-88 budget for the Community Education program was approximately \$29,000, including Remund's salary and benefits. If Remund's salary and benefits are excluded, then the 1987-88 program budget, prepared by Remund, was approximately \$2,700, which figure does not include the local self-funding programs. While Remund does not have authority to exceed the total budget, she does have the authority to move money between line accounts in the budget, although she has never done so without first informing the District's Administrator of such an intent.

8. Karen Marquardt has held the position of Computer/Gifted and Talented Coordinator since the start of the 1987-88 school year. For several years previously, she had taught third grade for the District. As part of her current duties Marquardt teaches two daily seventh and eighth grade classes in computer literacy. As the computer coordinator Marquardt orders computer hardware and software, arranges equipment maintenance and repair, purchases equipment, and oversees the computer curriculum. She reports to the District Administrator. Approximately three years ago, the then curriculum coordinator,

Patricia Graves, worked with a committee of teachers to develop and initiate a computer curriculum. Marquardt meets with various teachers to get their ideas for improving the curriculum, scheduling of classes and purchasing of equipment. Marquardt then decides on what changes in class scheduling or curriculum content should be made and on what equipment should be purchased. For the 1987-88 school year following the recommendation of some teachers, Marquardt determined that the seventh and eighth grade curriculum should be changed by inserting Logowriter, which change she implemented. The District's Board had allocated \$35,000 for the purchase of computer hardware for the 1987-88 school year. Marquardt selected the hardware to be purchased and submitted the necessary purchase orders to the District Administrator who approved the purchase orders as submitted. In selecting the hardware, Marquardt considered certain changes in the computer program which she had decided, with input from the teachers, to implement. Those changes involved setting up a computer laboratory with 15 Apple 11 computers and printers in the elementary school, establishing a laboratory with 15 computers in the high school business department, and dismantling the computer laboratory in the math department with those computers being placed in classrooms. Marquardt will meet with the teachers to decide which classrooms will receive the computers. Marquardt also decided to order additional cards both to expand the memory of the computers and to allow for more printers to be hooked to the computers. Outside of funds for the purchase of hardware, the computer program budget has very limited funds. When money is needed for other purposes, Marquardt must obtain those funds from the budgets of the principals. In her capacity as the Gifted and Talented (GAT) Coordinator, Marquardt works with the teaching staff to develop the curriculum and to assess students' needs. Marquardt seeks input from the teaching staff, however, she has the responsibility to establish the curriculum and activities for the talented and gifted program. Marquardt expanded the program to include high school students for the 1987-88 school year. The 1987-88 program budget was established before Marquardt became the Coordinator. She will be responsible for developing future budgets for the program. The 1987-88 program budget was approximately \$2,300.

9. Both Remund and Marquardt attend weekly meetings of the District's administrative team. The other members of the administrative team are the District Administrator, the three building principals, the assistant high school principal, and the supervisory social worker. The administrative team discusses issues and develops policies to deal with those issues. Normally, the suggestions and concerns of the teaching staff have been considered by the administrative team in establishing policies. When the team adopted a new form for staff performance evaluations, it was the form developed by a teacher committee. Input from the teachers was a very important element in the uniform attendance policy for students which the team implemented. Other policies with which the administration team has dealt include student absences to attend athletic tournaments, student retention in grade, and staff inservice programs. There is an in-service committee of District teachers which submits requests for in-service programs to the administrative team. The team decides whether or not the requests are appropriate. Each member of the administrative team has equal input when the team acts on a policy. The District's Board of Education is the only other policy making body for the District.

10. Each department head, including Remund and Marquardt, submits an annual budget to the District Administrator. After the total dollar amount of the department's budget is established, the department head can move funds between line items without prior approval, as long as the total budget amount is not exceeded.

11. Both Marquardt and Remund participate sufficiently in the formulation, determination and implementation of District policy and exercise sufficient authority to commit the District's resources so as to render them managerial employees.

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

CONCLUSION OF LAW

That the positions of Computer/Gifted and Talented Coordinator, currently occupied by Karen Marquardt, and Community Education Coordinator, currently occupied by Sharon Remund, are managerial, and therefore, Marquardt and Remund are not municipal employes 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 2/

That the positions of Computer/Gifted and Talented Coordinator and Community Education Coordinator shall be, and hereby are, excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

2/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(Footnote two continued on page seven)

(Footnote two continued from page four)

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.49. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

AMERY SCHOOL DISTRICT

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

POSITION OF NUE

NUE argues that the two positions are not managerial or supervisory in nature and, therefore, the occupants should be included in the bargaining unit. The employees attend the administrative team meetings primarily to serve as a conduit for ideas from the teachers.

As the GAT Coordinator, Marquardt works primarily with students and other teachers. Her duties as the Computer Coordinator include responsibility for instruction of computers in grades K-12 and development of the curriculum with other teachers, in addition to classroom teaching. Remund's authority to make changes in the community education program does not constitute managerial authority.

The budgetary responsibilities of Remund and Marquardt are ministerial and routine. All expenditures require approval by the administration. As of the hearing Marquardt had not prepared a budget. The computer program funding is derived from the principals budgets. The GAT budget is primarily based on the previous year. Similarly, Remund designs her budget based on expenditures in the previous year.

The Community Education instructors hired by Remund rarely include teachers employed by the District. Remund does not evaluate those instructors as District employees. As the Community Education Coordinator, Remund primarily is supervising an activity rather than employees.

POSITION OF THE DISTRICT

The District contends that the incumbents of both positions are managerial employees. Both employees are members of the administrative team, which is a major policy-making body of the District. In addition, both employees exercise policy making authority on a departmental level, by determining program content, including initiating and expanding program offerings. Also, both employees develop, submit and monitor budgets for their respective programs and have the authority to make changes in budgetary fund allocation without the approval of the District Administrator, as long as annual total program expenditures do not exceed the total budget funds.

Marquardt, as the Computer Coordinator, selected and signed purchase orders for \$35,000 worth of computer equipment. Although the teaching staff may give input as to desired purchases, Marquardt decides what purchases will be made.

Remund also functions as a supervisor through the selection of instructors for the WITC and community education programs, and the establishing of instructor salaries and the executing of instructor contracts for the community education program.

DISCUSSION

A two-fold analysis is used to determine whether an employee is "managerial" within the meaning of the statute. The Commission has held that a managerial employee is one who participates in the formulation, determination and implementation of policy to a significant degree, or who possesses

effective authority to commit the employer's resources either by exercising the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 3/

With respect to policy involvement, both Marquardt and Remund are members of the District's administrative team. As NUE notes, one of the functions of the team members is to serve as a conduit for the ideas, concerns and suggestions from the teachers in relation to policies which the team considers. For example, the change in the performance evaluation procedure was the adoption of a new form developed by a teacher committee. Similarly, teacher input was an important element in developing the student attendance policy. However, it was the administrative team which determined that those, and other, policies should be implemented. Marquardt and Remund participate in the discussion and adoption of policies. Those policies frequently have a district-wide impact.

Remund, in addition to her role on the administrative team, has demonstrated considerable authority in her capacity as the Community Education Coordinator, as evidenced by her expansion of the program, beyond WITC courses, to include both courses taught by UW - River Falls faculty and other community interest courses taught by local individuals. While she works with an Advisory Council, it is clear that she has been the moving force in the growth of the program. Remund's involvement in the formulation, determination and implementation of District policy is sufficient to find that she is a managerial employe. Such a finding is further supported by Remund's authority to establish the Community Education budget, albeit a relatively small dollar amount, the ability to hire individuals without prior approval, the ability to initiate community education programs, and, the independent authority to set the fees for such programs. Since Remund is a managerial employe, it is unnecessary to consider her supervisory status.

Marquardt, besides being a member of the administrative team, is responsible for overseeing the GAT and computer programs. She has utilized the advice and assistance of other teachers in developing and expanding those programs, especially in regards to the content of the programs. Nonetheless, Marquardt is responsible for the content and scope of both programs. She expanded the GAT program to include high school students. After meeting with the teachers, she decided to set up a computer lab at the elementary school, to set up a computer lab in the high school business department, to dismantle a computer lab in the high school mathematics area and move those computers into classrooms, to purchase additional cards both to expand the memory of the computers and to connect more printers to the computers, and, to insert Logowriter into the curriculum. Such decisions significantly impact on the nature of the programs provided to the students. 4/

Given the foregoing, the Commission is satisfied that Marquardt's participation in the formulation, determination and implementation of District policies and her authority to commit the District's resources are sufficient to render her a managerial employe.

Dated at Madison, Wisconsin this 4th day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

3/ Door County Courthouse, Dec. No. 24016-B (WERC, 8/88) Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 (Ct. App. 1986); Kewaunee County v. WERC, 141 Wis.2d 347 (Ct. App. 1987).

4/ Marquardt also has considerable input into budgetary matters affecting her programs.

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner