

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

MID-STATE ASSOCIATE STAFF ORGANIZATION :

Involving Certain Employees of :

MID-STATE VOCATIONAL, TECHNICAL AND  
ADULT EDUCATION DISTRICT NO. 14 :

Case VII

No. 21785 ME-1451

Decision No. 16094-C

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Appearances:

Mr. Michael L. Stoll, Staff Counsel, Wisconsin Education Association Council, appearing on behalf of the Petitioner.

Chambers, Nash, Pierce & Podvin, Attorneys at Law, by Mr. Dudley W. Pierce, appearing on behalf of the Municipal Employer.

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

An issue having arisen between the above named parties as to whether the position of Food Service Supervisor should be included in the collective bargaining unit consisting of all regular full-time and regular part-time custodial-maintenance, and food service employees in the employ of the above named Municipal Employer, excluding supervisory, confidential and managerial employees, and professional and teaching employees, executives, administrative employees, clerical employees, and student employees; and hearing in the matter having been conducted at Wisconsin Rapids, Wisconsin on September 21, 1977, before Duane McCrary, a member of the Commission's staff; and the Commission, having considered the evidence and briefs of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Mid-State Associate Staff Organization is an employee organization having its offices at Madison, Wisconsin.

2. That Mid-State Vocational, Technical and Adult Education District No. 14 is a Municipal Employer having its offices at Wisconsin Rapids, Wisconsin.

3. That on February 1 and 7, 1978, the Commission issued a Direction and Amended Direction of Election, wherein it directed that an election be conducted among all regular full-time and regular part-time custodial-maintenance and food service employees of Mid-State Vocational, Technical and Adult Education District No. 14, excluding supervisory, confidential, and managerial employees, professional and teaching employees, executives, administrative employees, clerical employees and student employees; that in its Direction of Election the Commission indicated, as developed in the hearing conducted by the Commission's agent prior to the issuance of the Direction, that an issue arose between the parties as to whether David Hall, Food Service Supervisor, was an "employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act; that, however, the parties, being desirous that the election be expeditiously conducted, agreed that Hall's ballot, if Hall appeared to vote, would be

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challenged and the issue as to whether Hall's position should or should not be included in the unit would subsequently be determined by the Commission; that Hall appeared to vote and his ballot was challenged; that the result of the election conducted on March 1, 1978 was as follows:

1. Total number claimed eligible to vote..... 11
2. Total ballots cast..... 10
3. Total ballots challenged..... 1
4. Total valid ballots counted..... 9
5. Ballots cast for Mid-State Associate Staff Organization..... 9
6. Ballots cast against Mid-State Associate Staff Organization..... 0

4. That on March 14, 1978, since Hall's challenged ballot did not affect the results of the election, the Commission issued a Certification of Representatives wherein it certified the Mid-State Associate Staff Organization as the exclusive collective bargaining representative of the employees included in the unit set forth in paragraph 3 above.

5. That Hall, as the Food Service Supervisor, commenced his employment with the Municipal Employer on January 19, 1976, and has continued in that position since that time; that he is generally responsible for the operation of the Municipal Employer's cafeteria; that in addition to Hall, the Municipal Employer employs in the cafeteria, a part-time cook, as well as eight student employees; that Hall participated, along with the Municipal Employer's Administrator and its Home Economist, in the hiring of the part-time cook; that Hall hired the student employees, who function as cashiers, dishwashers, servers, and general kitchen help; that Hall prepares work schedules and directs all the employees in the cafeteria; that Hall has the responsibility for purchasing food and supplies and in that regard spends approximately \$30,000 annually; that Hall prepares the cafeteria budget, which requires School Board approval; that in preparing the budget Hall estimates cost for salaries, fringe benefits, supplies and equipment; that Hall also sets food prices, and that Hall effectively recommends purchase of equipment to be utilized in the cafeteria.

6. That Hall spends approximately 25 percent of his time in the performance of the above duties while the remaining 75 percent of his time is spent in the cooking and preparation of food items; and that Hall is employed in the cafeteria for ten months and works as a part-time custodian during the summer months, Christmas and Easter holiday seasons.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

#### CONCLUSION OF LAW

That the position of Food Service Supervisor combines duties and responsibilities of a supervisory and managerial nature to an extent sufficient to make the incumbent in said position not a "municipal employee" within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

ORDER CLARIFYING BARGAINING UNIT

The position of Food Service Supervisor be, and the same hereby is, excluded from the bargaining unit involved herein.

Given under our hands and seal at the  
City of Madison, Wisconsin this 27th  
day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Marshall L. Gratz  
Marshall L. Gratz, Commissioner

MID-STATE VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT NO. 14,  
VII, Decision No. 16094-C

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

As noted in the Findings of Fact, an issue arose between the parties as to whether Hall, as Food Service Supervisor, should be included in the bargaining unit involved herein. The Municipal Employer contends that Hall's position is supervisory and managerial in nature. The Labor Organization argues that the position should be included in the bargaining unit on the basis that Hall's supervisory and managerial duties are insufficient to warrant exclusion from the unit and that he spends a majority of his time performing unit work.

In determining whether a municipal employee is a managerial employee and thus excluded from the definition of the term "municipal employee" contained in Section 111.70(1)(b) of the Municipal Employment Relations Act, the Commission has stated:

"The Commission has determined that managerial status is related to an employee's participation in the formulation, determination and implementation of management policy, as well as said employee's effective authority to commit the Employer's resources." 1/

Hall has the authority to commit a portion of the Municipal Employer's resources with respect to the operation of the cafeteria. We have stated in Shawano County Sheriff's Department (15257) 3/77 that:

"The power to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. By comparison, the authority to make expenditures from certain accounts to achieve those program purposes is ministerial, even though some judgment and discretion are required in determining when such expenditures should be made. Thus, the authority to spend money from a certain account for a specified purpose is not a managerial power, even though managerial employees also have that authority. For example, a secretary empowered to purchase postage on an as-needed basis would not have the power to commit the employer's resources within the meaning of this criterion for determining managerial status."

Thus, Hall exercises some authority that is managerial in nature which, when combined with the supervisory authority noted in the Findings sufficiently aligns him with management to make him other than a "municipal employee" despite the fact that a majority of his

time is spent at bargaining unit tasks. Hence, we have excluded his position from the bargaining unit.

Dated at Madison, Wisconsin this 27th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Marshall L. Gratz  
Marshall L. Gratz, Commissioner