

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

In the Matter of the Petition of  
**EVANSVILLE EDUCATION ASSOCIATION AUXILIARY--  
CAPITAL AREA UNISERV SOUTH**

Involving Certain Employees of  
**EVANSVILLE COMMUNITY SCHOOL DISTRICT**

Case 9  
No. 55687  
ME-912

**Decision No. 16127-B**

---

Appearances:

**Ms. Ellen La Luzerne**, UniServ Director, Capital Area UniServ South, 4800 Ivywood Trail, McFarland, Wisconsin 53558, appearing on behalf of Evansville Education Association Auxiliary, Capital Area UniServ South.

Melli, Walker, Pease & Ruhly, S.C., by **Attorney JoAnn M. Hart**, 119 Martin Luther King, Jr. Boulevard, P. O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of the Evansville Community School District.

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

Evansville Education Association Auxiliary--Capital Area UniServ South filed a petition to clarify bargaining unit on October 17, 1997, with the Wisconsin Employment Relations Commission seeking to include the Evansville Community School District positions of Middle School Principal's Administrative Assistant and the Elementary School Principal's Administrative Assistant in an existing unit it represents. The District opposes the petition and argues the employees are supervisors, confidential and managerial employees.

No. 16127-B

Hearing was held in Evansville, Wisconsin, on February 26, 1998, before Commission Examiner Lionel L. Crowley. The hearing was transcribed and the parties filed briefs and reply briefs, the last of which was exchanged on June 9, 1998.

The Commission, having reviewed the evidence and arguments of counsel and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

### **FINDINGS OF FACT**

1. Evansville Education Association Auxiliary--Capital Area UniServ South, hereinafter referred to as the Association, is a labor organization and has its offices at 4800 Ivywood Trail, McFarland, Wisconsin 53558.

2. Evansville Community School District, hereinafter referred to as the District, is a municipal employer and has its offices at 420 South Fourth Street, Evansville, Wisconsin 53536.

3. In 1978, in DEC. NO. 16127 (WERC, 3/78), the Wisconsin Employment Relations Commission certified the Association as the exclusive collective bargaining representative of the following District employees:

All full-time and regular part-time aides and clerical employees, including teacher aides, library aides, nurses' aides and secretaries, excluding professional employees, managerial employees, confidential employees, custodial and maintenance employees, and supervisors.

4. The District has a K-4 grade Elementary School, a 5-8 grade Middle School and a 9-12 grade High School. The Elementary School is connected by a large gymnasium to the High School and the Middle School is a few blocks from the High School. There is a principal in each building. At all times material herein, the High School Principal has had an Administrative Assistant who is excluded from the Association bargaining unit. Prior to July 1, 1997, there was no Administrative Assistant in the Middle or Elementary School.

The District has experienced significant growth in enrollment in the last 14 years. The Elementary School has gone from four sections in each grade K-4 with 20 teachers to eight sections of K, seven each of grades 1 and 2 and six sections of grades 3 and 4. It now has 54 teachers. The Middle School has also experienced increased enrollment. At the beginning of the 1996-97 school year, the Elementary and Middle School Principals informed the District Administrator that they needed more support due to the increase in staff and asked for an assistant principal at each school. The District Administrator said it wasn't likely that this would be approved but he would bring it up with the District's Board. The Board discussed it but decided it was not practical and the District

Administrator then suggested an administrative assistant at each school and the Board concurred. The District Administrator reported the Board's action to the Principals who were directed to write a job description for the position. The Principals drafted job descriptions which were revised and eventually approved by the District's Board.

5. The job descriptions for the disputed Administrative Assistants are essentially the same and provide, in part, as follows:

Duties and Performance

The principal's assistant will supervise clerks and educational assistants at the building level and will manage the elementary (middle school) office. The assistant will be responsible for the following duties:

1. Supervise all building clerks and assistants in the building.
  - a. Evaluate clerks and assistants, and prepare written evaluations of their work.
  - b. Assign daily work including special projects to clerks and assistants.
  - c. Schedule and approve vacation, personal leave, absences and other time off.
  - d. Receive and discuss grievances from clerks and assistants serve as a liaison between they (sic) and the principal.
  - e. Review disciplinary situations and recommend disciplinary actions to the elementary school (middle school) principal.
  - f. Conduct initial interviews, participate in second interviews, make recommendations for hiring of clerks and assistants.
2. Control and supply of office and instructional supplies.
  - a. Fulfill staff and student supply needs.
  - b. Maintain sufficient inventory of supplies for staff and all reproduction machines.
  - c. Fulfill requests for printed forms such as report cards, envelopes, mid-terms, conference letters, music programs, handbooks and etc.
  - d. Arrange proper maintenance of office and assistant workroom machines.

6. The two positions of Administrative Assistant were posted on May 22, 1997, and Susan Marenas, the Elementary School Secretary, was the only one to sign the posting for the Elementary School and was awarded the position on August 11, 1997. Jane Sperry, the Middle School Secretary, was the only applicant for the Middle School Administrative Assistant and she was awarded the position on August 11, 1997.

7. The Middle School Administrative Assistant, Jane Sperry, spends at least 30% of her work day supervising the Media Assistant, the Study Hall Aide, the Office Clerk and five EEN Teacher Assistants. She reassigns employees as necessary, signs their time cards, approves sick leave and other time off, arranges substitutes for absent employees, counsels employees when needed,

holds staff meetings with these employees, evaluates employees, drafts job descriptions, screens applicants for positions, independently conducts the initial interview, participates in the second interview and makes an effective recommendation on who should be hired.

Sperry is paid an hourly rate of \$10.64/hour and as a Secretary made \$9.15/hour. Sperry types the Principal's evaluations of teachers, any discipline, letters of referral and any communication between the Middle School and the District's offices. Sperry prepares the office budget for the Middle School, orders and purchases supplies and arranges for equipment servicing.

8. The Elementary School Administrative Assistant, Susan Marenas, supervises eleven aides and two clerks. Marenas schedules and reschedules employees on a daily basis, arranges substitutes, approves sick leave and other absences and signs employees' time cards. Marenas evaluates employees and has counseled employees on procedures for performing work. Marenas holds staff meetings with employees. Marenas is responsible for recruiting, interviewing and recommending for hire employees in the aide and clerk positions she supervises. In one instance, Marenas created an external posting for a position, screened the applicants, drafted the interview questions and along with the Director of Student Services and an EEN Teacher, interviewed prospective employees, fielded the applicants' questions and by a consensus process selected and effectively recommended to the Board the applicant who was hired.

Marenas' pay rate on an hourly basis is \$10.64/hour and as Secretary, she was paid \$9.15/hour.

Marenas takes notes of investigatory and disciplinary meetings between the Principal and professional staff and types the notes. She types all teacher evaluations by the Principal. Marenas prepares the Elementary School's office budget and purchases supplies and services for the office.

9. The occupants of the Administrative Assistant positions at the Elementary and Middle Schools possess and exercise supervisory responsibilities in sufficient combination and degree so as to make them supervisors.

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

### **CONCLUSION OF LAW**

1. The occupants of the positions of Administrative Assistant in the Elementary and Middle Schools are supervisors within the meaning of Sec. 111.70(1)(o), Stats., and thus are not municipal employees 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**

The positions of Administrative Assistant in the Elementary and Middle Schools shall continue to be excluded from the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 14<sup>th</sup> day of August, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

---

James R. Meier, Chairperson

A. Henry Hempe /s/

---

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

---

Paul A. Hahn, Commissioner

EVANSVILLE SCHOOL DISTRICT

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

The Association filed the instant petition to clarify bargaining unit seeking to include in the unit the Administrative Assistants to the Elementary and Middle School Principals. The District takes the position that the employees are supervisors, and confidential and managerial employees and should continue to be excluded from the unit.

**ASSOCIATION POSITION**

The Association contends that the District has used a scattershot approach of adding duties to these positions and then claiming they are supervisory, confidential and managerial. The Association submits that the District could function quite well without excluding these positions as the level and frequency of duties are limited and could be handled by other administrative personnel.

As to the factors the Commission considers in determining supervisory status, the Association contends that the hiring process involves a team approach which does not necessarily imply supervisory status. It asserts that the initial screening and interviewing can be accomplished through non-supervisory personnel. It submits that the Principal and Superintendent make the ultimate hiring decision and when an employee was transferred from the Middle School to the Elementary School, neither Marenes nor Sperry were consulted. It notes that decisions on discipline have not been tested to date and the Administrative Assistants have functioned in a very limited manner. As to the authority to direct and assign the work force, these duties, according to the Association, can be assigned to lead workers and it is standard practice to have support staff call in substitutes. It notes that teachers direct the work activity of education assistants and the Administrative Assistants are supervising work rather than workers.

As to the number of employees supervised, it notes that the Principals supervised their respective buildings and now have created a new level of bureaucracy; however, teachers have similar input and authority over these employees and are not supervisors. As to pay level which went from \$9.15/hour to \$10.64/hour, the Association points out that these employees are paid less than a starting teacher and it estimates that the Principals are paid two or three times as much. It argues that the difference in pay is explained by increases in non-supervisory responsibilities when their job duties changed.

The Association maintains that the Administrative Assistants are performing clerical duties and directing work flow and direct supervision duties are minimal. It observes that 16 of the 21

employees are education assistants working primarily as part of the educational process with day-to-day work under the classroom teacher. It argues that the evaluations performed every two years average four to six hours per year which is de minimus. The Association alleges that one of the major duties taken over by Marenas is supervising student activity for 420 minutes a week which is not a supervisory duty. The Association claims that the Administrative Assistants mainly provide clerical and lunch room supervision and only one percent of the time is spent on supervisory duties. The Association argues that the Principal did not provide much direction to these positions before and that even after the change in classification, any major decisions are made by committee or in conjunction with others so these Administrative Assistants have input but limited independence in decision making.

With respect to managerial status, the Association concedes that these employees work on the budget, but asserts they do not have authority to commit the District's resources because the budget goes through the Principal before submission for Board approval. It notes that the employees can purchase supplies and have equipment repaired but spending is within a budget for minor items. The Association claims that they do not possess the authority to commit the District's resources in any substantial way and should not be considered managerial.

The Association argues that these employees are not confidential and their participation is limited to contract enforcement. It points out the number of grievances is small, seven since 1991 for an average of one per year. It submits that their participation in confidential matters is very minimal and not sufficient to exclude them on the basis that they are confidential.

It concludes that the supervisory, managerial and confidential duties of the Administrative Assistants are insufficient to exclude them from the bargaining unit. It reiterates that as the positions are clerical in nature and clearly fall within the bargaining unit description, the District is undermining the bargaining unit and attempting to limit the employees' right to representation. It observes that Marenas and Sperry publicly worked toward exclusion from the unit and the District is attempting to accommodate them by removing them from the unit. It notes that in 1978 there were five secretarial positions and now there is one. It asks that the Administrative Assistants be included in the bargaining unit.

### **DISTRICT POSITION**

The District contends that the Middle School Administrative Assistant is a supervisor. It points out that she testified that she supervises eight support staff in the Middle School and on a daily basis assigns work, approves time cards, arranges for substitutes, orients and trains substitutes, approves sick and other leave - all duties which the Principal had performed previously. It submits that she counsels employees and in October, 1997, counseled an employee not to perform personal work during school time. It notes that she holds staff meetings, evaluates employees and interprets the collective bargaining agreement with respect to the rights of employees. It argues that she recruited, interviewed and participated in hiring an applicant for a newly created position. It asserts that she acts for the Principal in his absence except for student discipline issues. It states that

she is paid at a higher rate to reflect her supervisory duties and argues that because she spends only 25-40% of her time on clerical duties, she is not a “working supervisor.” The position is supervisory and should be excluded from the unit.

The District takes the position that the Elementary School Administrative Assistant is a supervisor based on the job description and her duties which include supervising 13 employees, scheduling them, assigning particular job duties throughout the day, arranging for substitutes and reassigning employees when necessary. It observes that she approves leaves, signs time cards and evaluates employees, including three between August, 1997 and February 26, 1998. It claims she counsels employees, holds staff meetings and created a new policy on student lunch time. It points out that she is responsible for recruiting, interviewing and recommending the hire of support staff. In one case, Marenas reviewed the applicants for hire, prepared interview questions, screened applicants, and then interviewed applicants along with a teacher and the Director of Student Services and reached a consensus on the successful applicant. It concludes that the position is supervisory.

The District contends that the Administrative Assistants are confidential. It submits that the Administrative Assistant is the only confidential employee in their respective schools and they type all the confidential documents including notes of investigatory and disciplinary meetings and teacher evaluations. It asserts that the Union may argue that it gets all this information but it is in final form and virtually all go through a drafting process where changes are made which is confidential work. It states that the Middle School Principal supervises 24 teachers and the Elementary School Principal supervises 54 teachers and each has significant labor relations responsibilities and even if the amount of confidential work is not substantial, it would be unduly disruptive if the Administrative Assistants were not found to be confidential.

The District claims that the Administrative Assistants are managerial. The District argues that each has authority to commit the District’s resources as each prepares the office budget for their respective school and they are responsible for ordering supplies and arranging for servicing office equipment. It maintains that these duties do not consume a substantial amount of time but do warrant exclusion from the unit as managerial. The District takes the position that the evidence establishes that the Administrative Assistant positions are supervisors, confidential and managerial employees and the petition should be dismissed.

### **ASSOCIATION REPLY**

The Association argues that the Administrative Assistants engage in a minimal amount of supervisory, managerial and confidential duties which could be assigned to other supervisory, managerial or confidential staff and it seeks inclusion of the positions in the bargaining unit.

### **DISTRICT REPLY**

The District contends that the Union's brief contains unsupported or erroneous assertions in its attempt to dispute the evidence. It states that without facts or law to support it, the Union falls back on its unsupported claim that the District is undermining the bargaining unit and limiting the employees' right to representation. It submits that the Union's argument lacks any factual, legal or logical support. It submits it established that the positions provide direct supervision, managerial direction and confidential clerical support to the Principals and are properly excluded from the unit.

### **DISCUSSION**

Section 111.70(1)(o), Stats., defines a "supervisor" in pertinent part as:

. . . 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.

When evaluating the claim of supervisory status under Sec. 111.70(1)(o), Stats., 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 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/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

Not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether factors supporting supervisory status are present in sufficient combination and degree to warrant finding an employee to be a supervisor. WALWORTH COUNTY, DEC. NO. 29378 (WERC, 5/98).

The record establishes that the Administrative Assistants should be excluded from the bargaining unit based upon the supervisory duties performed by the incumbents, Sperry and Marennes.

The incumbents have been in the positions only since August 11, 1997. Nonetheless, their supervisory status is clear. The Principals have turned over the supervision of support staff employees to the Assistants.

The Assistants assign and reassign work to the support staff. They hold staff meetings with the employees they supervise. Sperry supervises eight employees and Marennes thirteen employees. They sign employees' time cards and approve sick leave and other leaves. While no significant discipline has been meted out, they have both counseled employees, and we conclude their disciplinary recommendations would be effective. They evaluate employees. As evidenced by Marennes' significant role in the hiring of a Special Education Program Aide, they have significant hiring authority. They spend a substantial amount of their time directing the work of the support staff and we are satisfied they are compensated at the higher pay level than bargaining unit employees due to their supervisory responsibilities.

We conclude that the Administrative Assistants in the Elementary and Middle Schools possess supervisory authority in sufficient combination and degree to warrant exclusion of the positions and incumbents as supervisors. WEST BEND JT. SCHOOL DISTRICT NO. 1, DEC. NO. 16669-A (WERC, 12/92); DEPERE SCHOOL DISTRICT, DEC. NO. 25712-A (WERC, 10/90).

Given our conclusion, we need not and do not determine whether they are also confidential or managerial employees.

Dated at Madison, Wisconsin, this 14<sup>th</sup> day of August, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

---

James R. Meier, Chairperson

A. Henry Hempe /s/

---

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

---

Paul A. Hahn, Commissioner