

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

GENERAL DRIVERS AND HELPERS UNION :
LOCAL 662 :

Case XV
No. 22034 ME-1474
Decision No. 16467

Involving Certain Employees of :
WINTER JOINT SCHOOL DISTRICT NO. 1 :
- - - - -

Appearances:

DeWitt, McAndrews & Porter, S.C., Attorneys at Law, by Mr. Robert
M. Hesslink, Jr., appearing on behalf of the Municipal Employer.
Mr. Robert E. Stein, Business Representative, appearing on behalf
of the Union.

DIRECTION OF ELECTION

General Drivers and Helpers Union Local 662 having, on September 9, 1977, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act among regular full-time and regular part-time maintenance personnel and custodians, cooks and school bus drivers in the employ of the Winter Joint School District No. 1 to determine whether said employees desire to be represented by the Union for purposes of collective bargaining; and a hearing on said petition having been held at Winter, Wisconsin, on October 26, 1977, before Duane McCrary, a member of the Commission's staff; and a transcript having been prepared and briefs in said matter having been filed by March 8, 1978; and the Commission, having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

1. That General Drivers and Helpers Union, Local 662, hereinafter referred to as the Union, is a labor organization with offices at Eau Claire, Wisconsin.

2. That Winter Joint School District No. 1, hereinafter referred to as the Municipal Employer, has its offices at Winter, Wisconsin; that the Municipal Employer operates a school district consisting of Winter High School, the Winter Elementary School, and the Radisson Elementary School; and that the Municipal Employer employs, among others, individuals in the following positions at the schools noted:

Winter High School and Grade School

Head Custodian (1)
Custodian -- Full Time (3)
Head Cook (1)
Cook (3)

Radisson School

Head Custodian (1)
Head Cook (1)
Cook (2)

Serving Winter and Radisson Schools

Chief Mechanic-Bus Driver (1)
Bus Driver (9)

3. That, in addition to the three full-time custodians employed at the Winter school, four additional individuals also perform custodial

work at such school, and two additional individuals also perform custodial work at the Radisson school; that said six individuals are hired by either the Green Thumb or Neighborhood Youth Corps and they are paid by said agencies from federally funded programs; that the Municipal Employer merely provides the work place for such individuals; and that the Head Custodians assign work to said individuals and maintain their time records for submission to the agencies involved.

4. That during the course of the hearing herein the Municipal Employer, contrary to the Union, contended that the individuals occupying the positions of Head Custodian, Head Cook, and Chief Mechanic-Bus Driver performed such supervisory and/or managerial duties so as to exclude them from the agreed upon unit consisting of "all regular full-time and regular part-time maintenance personnel and custodian, cooks and school bus drivers in the employ of the Municipal Employer, excluding managerial and supervisory employees, and all other employees."

5. That the individuals occupying the positions of Head Custodians, Head Cooks, and Chief Bus Mechanic-Head Bus Driver perform duties of "lead persons", since they do not possess, or exercise, supervisory and/or managerial authority in sufficient combination or degree to be deemed supervisory or managerial employees.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time maintenance and custodial employees, cooks and bus drivers in the employ of Winter Joint School District No. 1, excluding managerial, supervisory and confidential employees constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2a of the Municipal Employment Relations Act.

2. That the individuals hired by either the Green Thumb or Neighborhood Youth Corps, who perform custodial work at the Winter and Radisson schools are not employees of Winter Joint School District No. 1 within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and therefore said individuals are not included in the collective bargaining unit set forth in para. 1 hereof.

3. That the positions of Head Custodian, Head Cook and Bus Mechanic-Head Bus Driver are neither supervisory nor managerial employees within the meaning of the Municipal Employment Relations Act, and therefore, said positions are appropriately included in the bargaining unit described in para. 1 hereof, and as a result, the individuals occupying said positions are eligible to vote in the election directed herein.

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

DIRECTION OF ELECTION

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty days of the date of this Directive in the appropriate collective bargaining unit consisting of all regular full-time and regular part-time maintenance and custodial employees, cooks and bus drivers in the employ of Winter Joint School District No. 1, excluding managerial, supervisory and confidential employees, who were employed by the Municipal Employer as of the end of the 1977-1978 school year, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees casting valid ballots desire to be represented by General Drivers

and Helpers Union Local 662 for the purposes of collective bargaining with Winter Joint School District No. 1 with respect to wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this *20th* day of July, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Appropriate Unit

In its petition initiating the instant proceeding the Union alleged that the appropriate unit should include maintenance and custodial employes, cooks and assistants, as well as regular school bus drivers. The District would describe the appropriate unit as consisting of all regular full-time and regular part-time custodians, cooks, and bus drivers, excluding supervisory, confidential, managerial and all other employes of the District. The parties are not in disagreement as to the general description of the unit, and the unit as described by the District has been found to constitute an appropriate collective bargaining unit within the meaning of MERA.

Issues as to Eligibles

The District, contrary to the Union, contends that the Head Custodian at the Winter Schools (Michael Kasper), the Head Custodian at the Radisson School (Ray Stasik), the two Head Cooks (Ione Tenney at Winter and Bertha Thorhaug at Radisson), as well as the Chief Mechanic-Head Bus Driver, Bud Wisnefski, should be excluded from the unit on the basis of their supervisory and/or managerial status.

Section 111.70(1)(o) of MERA defines the term "supervisor" as follows:

"As to other than municipal and county firefighters, 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 merely routine or clerical nature, but requires the use of independent judgment."

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considered 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 less 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 primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees. 1/

1/ St. Croix County (14518) 4/76; Fond du Lac County (10579-A) 1/72.

In determining whether positions are to be excluded from a bargaining unit on the basis of managerial status the Commission considers the degree to which the individuals in question participate in the formulation, determination and implementation of management policy and possess the authority to commit the Employer's resources. 2/

Head Custodians

Michael Kaspar, the Head Custodian at Winter School, directs the activity of three full-time custodians and four additional individuals who are not employed by the District, as noted in Finding of Fact 3. Kaspar spends a majority of his time performing custodial work, and he is not present in the evenings when the bulk of custodial work is performed by others. Kaspar does not evaluate the performance of the custodians at Winter School. He routinely assigns custodial tasks and routinely inspects the custodial work. The Superintendent and Kaspar approve sick leave and time off for personal reasons. After consultation with the Superintendent, Kaspar establishes the work schedule during student vacations for the custodians.

Ray Stasik, the Head Custodian at the Radisson School, is the only custodian employed by the District at said school. Two additional individuals, not employees of the District, as noted in Findings of Fact 3, also perform custodial work. Therefore Stasik has no "employees" to supervise, and he spends the vast majority of his time performing custodial duties. Both Kaspar and Stasik are hourly paid. Neither possess the authority to effectively hire, discipline, or terminate any District employee. On the basis of the above we conclude that neither Kaspar nor Stasik are supervisors.

The record does not establish that either Head Custodian participates in decisions involving management policy. Stasik forwards his requisition requests to Kaspar, who includes it with his request, and then submits same to the Superintendent, who considers said request in the preparation of the annual custodial and maintenance budget, as part of the master budget, which is considered by the District's Board. While Kaspar has authority to order more materials and supplies than Stasik, both are limited to spending only those amounts of money allocated by the Budget for such purposes. Thus Kaspar and Stasik only have a limited role in the budgetary process, and they do not have the authority to commit the District's resources in a manner sufficient to warrant the conclusion that they are managerial employees. 3/

Head Cooks

The Head Cooks, Ione Tenney at Winter and Bertha Thorhaug at Radisson, spend a majority of their time cooking and preparing menus. Both direct the activity of other cooks at their respective schools (three at Winter

2/ City of New London (12170) 9/73; Shawano County Sheriff's Department (15257) 3/77.

3/ In Shawano County (15257) 3/77 the Commission stated:

"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 . . ."

and two at Radisson), but such direction is limited to a routine determination of work schedules and job assignments, such as preparing certain foods, baking, operating the dishwasher, locating substitute cooks from an established substitute list, and determining whether daily menus meet established State nutritional standards. Neither Tenney nor Thorhaug has ever evaluated or disciplined employees, nor do they adjust employee complaints. Only the School Board makes decisions with respect to the hire and termination of cooks, although on one occasion Tenney effectively recommended that a part-time employee be given full-time status.

Tenney discusses the food budget for both Winter and Radisson schools with the Superintendent, and the latter has the responsibility for the preparation of said budget and its incorporation into the master budget prior to its submission to the School Board for final determination. Tenney purchases most of the food stuffs for both schools, however such purchases cannot exceed the established budget. To a lesser extent, Thorhaug orders and purchases food stuffs for the Radisson school, also in amounts not to exceed the established budget levels.

The Head Cooks do not participate in the formulation of management policy. While Tenney discusses the food budget for the District's schools with the Superintendent, she does not have the authority to commit the District's resources in a manner sufficient to warrant her exclusion from the unit as a managerial employee. For the foregoing reasons we have found the Head Cooks to be employees included in the unit and eligible to vote.

Chief Mechanic - Head Bus Driver

Bud Wisniewski is employed as the Chief Bus Mechanic and Head Bus Driver under the general supervision of the Superintendent. He maintains the buses and makes necessary repairs. Wisniewski spends approximately eighty percent of his time performing mechanical work, and twenty percent of his time assigning bus routes, arranging for substitute drivers, driving buses, and ordering materials. He may approve driver's requests for one or two day sick leaves. Longer periods of sick leave must be approved by the Superintendent. He does not evaluate employee performance, nor does he interview applicants for employment, although on one occasion he directed management's attention to the fact that an applicant for a regular bus driver position was the first driver on the substitute list and possessed the requisite bus driver's license, after which such individual was hired as a regular driver.

Wisniewski has made recommendations to the District concerning maintenance of the bus barn, as well as to the type and number of buses which the District should purchase. However such recommendations are not always followed. He is authorized to purchase materials and supplies from sums which have been appropriated in the budget. He has no authority to purchase capital outlay items. He discusses complaints concerning bus drivers with the drivers involved, however, serious complaints are reported by him to the Superintendent. Since Wisniewski spends only a small portion of his time in directing the activities of drivers and the majority of his time in performing mechanical repairs, we conclude that he is not a supervisor. Further his purchasing authority is insufficient to warrant a finding that he is a managerial employee.

Dated at Madison, Wisconsin this *20th* day of July, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slaveney
Morris Slaveney, Chairman

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