STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
SOUTH SHORE EDUCATION ASSOCIATION	:	Case III
For Clarification of a Bargaining Unit Consisting of Certain Employes of	:	No. 21061 ME-1388 Decision No. 16484
SOUTH SHORE JOINT SCHOOL DISTRICT NO. 1	: : :	
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Appearances:

Losby, Riley and Farr, Attorneys at Law, by <u>Mr. Stevens L. Riley</u>, appearing on behalf of the District. <u>Mr. Michael Stoll</u>, Staff Counsel, Wisconsin Education Association

Council, appearing on behalf of the Association.

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

South Shore Education Association, hereinafter referred to as the Association, having petitioned the Wisconsin Employment Relations Commission to determine whether certain positions should be included in the voluntarily recognized collective bargaining unit consisting of certain professional employes of the South Shore Joint School District No. 1; and, subsequently, the Association and the District having resolved their dispute over all the positions raised in the petition except for the positions of elementary school principal and junior/senior high school principal; and, thereafter, the Association having filed an amended petition requesting that the bargaining unit be clarified so as to include the positions of elementary school principal and junior/senior high school principal; and a hearing 1/ in the matter having been conducted in Washburn, Wisconsin on April 13, 1977 before Ellen J. Henningsen, Examiner; and the Commission, having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusions of Law and Order Clarifying the Bargaining Unit.

FINDINGS OF FACT

1. That South Shore Joint School District No. 1, hereinafter referred to as the District, is a municipal employer which operates a public school system. The District employs approximately thirty teachers and operates two elementary schools, one in Herbster and the second in Oulu, and one junior/senior high school in Port Wing.

2. That the South Shore Education Association, hereinafter referred to as the Association, is the voluntarily recognized collective bargaining representative of all full-time and regular part-time employes of the District engaged in teaching, including classroom teachers, Title teachers, librarians and guidance counselors, but excluding administrators, coordinators, principals having evaluative responsibilities over other staff members, non-instructional personnel such as nurses and social workers, and office, clerical, maintenance and operating employes.

<u>1</u>/ The parties waived, in writing, the preparation of a transcript of the proceeding and the provisions of Section 227.09(4), Wis. Stats.

4. That the duties and responsibilities of Larson and Maki are insufficient in combination and degree so as to constitute said individuals as supervisors; but that the duties and responsibilities of Fleming are sufficient in combination and degree so as to constitute Fleming a supervisor.

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

CONCLUSIONS OF LAW

1. That Margaret Larson and Dorothy Maki are municipal employes within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That Ruel Fleming is a supervisor within the meaning of Section 111.70(1)(0)1 of the Municipal Employment Relations Act.

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

ORDER

1. That the position of the Herbster elementary school principal, occupied by Margaret Larson, and the position of Oulu elementary school principal, occupied by Dorothy Maki, be, and the same hereby are, included in the bargaining unit described herein.

2. That the position of junior/senior high school principal, occupied by Ruel Fleming, be and the same hereby is, excluded from the bargaining unit described herein.

Given under our hands and seal at the City of Madison, Wisconsin this Aff day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

YHQ. Slavney, Chairman Commissioner Herman Torosian,

Marshall L. Gratz, Commissioner

SHORE SHORE JOINT SCHOOL DISTRICT NO. 1, III, Decision No. 16484

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

The Association and the District stipulated at the hearing that the only issues before the Commission were whether Margaret Larson, Herbster elementary school principal, Dorothy Maki, Oulu elementary school principal, and Ruel Fleming, junior/senior high school principal, are supervisors within the meaning of Section 111.70(1)(0)1 of the Municipal Employment Relations Act. The Association, contrary to the District, claims that the principals are not supervisors but rather that they function as leadpersons and thus should be included in the bargaining unit.

Section 111.70(1)(o)l 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, layoff, recall, promote, discharge, assign, reward or discipline other employes 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 of a 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, considers the following factors:

1. The authority to recommend effectively the hiring, promotion, transfer, discipline, or discharge of employes;

2. The authority to direct and assign the work force;

3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;

4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employes;

5. Whether the supervisor is primarily supervising an activity or primarily supervising employes;

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes;

7. The amount of independent judgment and discretion exercised in the supervision of employes. 2/

Elementary Principals

Margaret Larson is employed as principal and full-time teacher at Herbster elementary school while Dorothy Maki is employed as principal and full-time teacher at Oulu elementary school. In addition to receiving the regular teaching salary and fringe benefits set forth in the collective bargaining agreement between the Association and the District, Larson and Maki receive \$485 and \$385 per year, respectively, for the performance of the duties of elementary school principal. Both are required to be at school 45 minutes more per day than other teachers and they are contracted to work five additional days per school year. They spend approximately one hour per day performing the duties of principal.

2/ City of Milwaukee (6960) 12/64; City of Merrill (14707) 6/76.

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One hundred and ten students attend Herbster elementary school. They are taught by four full-time classroom teachers, including Larson, one part-time classroom teacher, one full-time remedial reading teacher and one part-time special learning disabilities teacher. In addition, one custodian works at Herbster elementary school.

Eighty-five students attend Oulu elementary school. They are taught by three full-time classroom teachers, including Maki, one part-time classroom teacher and one part-time special learning disabilities teacher. In addition, one custodian works at Oulu elementary school.

As principals, Larson and Maki perform the following duties. They serve as liaison between the District Administrator and the teachers, collect lunch money, receive and distribute phone messages, handle serious student discipline matters, handle communications with parents and obtain substitute teachers. They also grant requests from building personnel to arrive late and leave early. They initiate the process of planning and scheduling in-service programs, classes and curriculum and of allocating the budget among specific items or programs and are responsible for insuring that decisions are made, but decisions on these matters are made by a consensus of the teaching staff. They are responsible for preparing summer building maintenance plans and for insuring that teachers complete their inventory at the end of the school year. They participate in inter-views of applicants for teaching positions in their respective schools, but their authority to effectively recommend hiring has not been demon-Although the building principals are the first step in the constrated. tractual grievance procedure, they have no authority to resolve a grievance on behalf of the District and in fact are not aware that the agreement between the Association and the District calls for their participation in the grievance procedure.

The elementary principals observe and evaluate the performance of teachers and instruct them on ways to improve. Should either principal decide that a teacher has not improved sufficiently, they would refer the matter to the District Administrator who would independently evaluate the teacher; however, neither principal has referred any teachers to the Administrator for this purpose. When evaluating teachers, the principals make value judgments about the quality of the teachers' performance. The evaluation process was instituted by the District Administrator primarily to improve the teaching staff. However the principals were not told that evaluations would be used for the purpose of possible non-renewals of teachers. The principals are aware that the evaluations could be used in such a manner. Should the need arise to discharge or non-renew a teacher on their staff, the principals would participate in the decision making process with the District Administrator and the Board of Education.

Since the Administrator independently evaluates the teachers in the elementary schools we are satisfied that the evaluations performed by Larson and Maki are not so effective as to clothe them with supervisory status. At the most Larson and Maki have little, if any, independent supervisory authority over employes. Furthermore, they are full-time teachers. We are satisfied that they perform their "supervisory" function as "lead-persons" rather than supervisors, and therefore they are included in the bargaining unit. 3/

Junior/Senior High School Principal

Ruel Fleming is employed as a part-time teacher, carrying 5/7ths of a full-time workload, as principal of the junior/senior high school and as Athletic Director. In addition to receiving the regular teacher salary and fringe benefits set forth in the collective bargaining agreement between

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Menomonie Jt. School Dist. No. 1 (12241-A) 12/73.

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the Association and the District, Fleming receives an extra 10% of his salary because of his additional duties. Nine full-time teachers and seven part-time teachers, including Fleming, are employed at the high school. Fleming is required to work 45 minutes a day longer than teachers and is contracted to work ten additional days per school year.

In addition to his regular teaching duties, Fleming performs the following duties not performed by teachers. He participates in interviewing applicants for teaching positions in the junior/senior high school but his authority to effectively recommend hiring has not been demonstrated. He handles serious student discipline problems, obtains substitute teachers, determines and assigns bus routes to the District's ten bus drivers, assigns his part-time secretary her job duties, evaluates her job performance and has the authority to grant requests of building personnel to arrive late and leave early. He has the responsibility for the scheduling and planning of in-service programs, classes and curriculum and for the allocating of budget monies.

Fleming establishes the athletic budget in conjunction with the coaches and within guidelines set by the Board, schedules transportation for these events, and approves all field trips proposed by teachers. He is the first step in the teachers' grievance procedure for teachers in his building, although he does not have the authority to resolve a grievance on behalf of the District. Fleming is the custodian of personnel and student records for his building and controls other's access to said records.

Fleming observes and evaluates the job performance of ninth through twelth grade teachers and has been asked by the Board for his recommendations concerning teachers' performance and competency. Fleming has also had numerous discussions with the District Administrator concerning whether certain teachers should be renewed or non-renewed. Based on Fleming's evaluations of teachers, he instructs them on ways to improve their performance.

Based on the above duties, especially his effective recommendations concerning teachers' performance and competency, the Commission is satisfied that Fleming exercises sufficient supervisory authority to warrant the conclusion that he is a supervisor within the meaning of Section 111.70(1)(0)1 of MERA. Therefore, he is excluded from the bargaining unit.

Dated at Madison, Wisconsin this 4700 day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

aune Chairman NOC Torosian, Commissioner

Marshall L. Gratz, Commissioner