

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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MILWAUKEE TEACHERS EDUCATION ASSOCIATION	:	Case CI
	:	No. 24218 ME-1639
Involving Certain Employees of	:	Decision No. 17009-C
	:	
MILWAUKEE BOARD OF SCHOOL DIRECTORS	:	
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Appearances:

Perry, First, Reiher, Lerner & Quindel, S.C., by Mr. Richard Perry, 222 East Mason Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Milwaukee Teachers Education Association.

The Office of the City Attorney, Mr. James Brennan, City Attorney, by Mr. Jeffrey L. Bassin, 800 City Hall, Milwaukee, Wisconsin 53202, appearing on behalf of the Milwaukee Board of School Directors.

Rausch, Hamell, Ehrle, Sturm & Blom, S.C., by Mr. John A. Hamell, and Ms. Jan Rosenak, 7500 West State Street, Milwaukee, Wisconsin 53213, and Mr. Paul Bauman, Executive Secretary, 5710 West Vliet Street, Milwaukee, Wisconsin 53201, appearing for the Administrators and Supervisors Council.

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

Milwaukee Teachers Education Association having filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit represented by it, which unit consists of teaching personnel in the employ of the Milwaukee Board of School Directors; and hearing in the matter having been held at Milwaukee, Wisconsin on May 11, and on June 10, 1981, during the course of which Administrators and Supervisors Council was permitted to intervene by Examiner William C. Houlihan, a member of the Commission's staff; and a transcript having been prepared of said hearing, and briefs having been filed by October 7, 1981; and the Commission, having considered the evidence and arguments of Counsel, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Milwaukee Teachers Education Association, hereinafter referred to as the MTEA, is a labor organization having its offices at 5130 West Vliet Street, Milwaukee, Wisconsin 53208.
2. That the Milwaukee Board of School Directors, hereinafter referred to as the Board, is a municipal employer and has its offices at 5225 West Vliet Street, Milwaukee, Wisconsin 53201.
3. That the Administrators and Supervisors Council, hereinafter referred to as the ASC, is an organization having its offices located at 5710 West Vliet Street, Milwaukee, Wisconsin 53208; and that ASC represents, for purposes of collective bargaining, administrators and supervisors in the employ of the Board.
4. That in the collective bargaining agreement between the Board and the MTEA, which is in effect from January 1, 1980 to June 30, 1982, the Board recognizes the MTEA as the duly certified bargaining representative for a unit described as:

. . . all regular teacher personnel (hereinafter referred to as teachers) teaching at least fifty percent (50%) of a full teaching schedule, those presently on leave, and those teaching on a regular part-time basis less than fifty percent (50%) of a full teaching schedule, (including guidance

counselors, school social workers, teacher-librarians, traveling music teachers and teacher therapists, including speech pathologists, occupational therapists, physical therapists, community recreation specialists, activity specialists, music teachers 550N who are otherwise regularly employed in the bargaining unit, team managers, clinical educators, speech pathologists, itinerant teachers, diagnostic teachers, vocational work evaluators, community human relations coordinators, human relations curriculum developers, mobility and orientation specialists, community resource teachers, program implementors and curriculum coordinators, montessori coordinators, excluding substitute per diem teachers, office and clerical employes, and other employes, supervisors and executives). 1/

5. That on February 18, 1981, the MTEA filed a petition requesting the Wisconsin Employment Relations Commission to clarify said unit by determining whether the position of Human Relations Coordinator should be included therein; that said position has never specifically been included or excluded from the unit described in paragraph 4; that the Board included the Human Relations Coordinator position in the unit represented by ASC without the agreement of the MTEA; and that the Board employs five Human Relations Coordinators, namely Russell Kania, Gwen Beard, Leonard Dale, William Jones, and Clement Magner.

6. That the MTEA contends that the Human Relations Coordinator position should be in the bargaining unit represented by it since the Human Relations Coordinators are municipal employes, under the Municipal Employment Relations Act (MERA), who perform duties similar to those performed by employes in the bargaining unit represented by it; that the Board contends that the Human Relations Coordinators are supervisory or managerial employes who cannot properly be included in said unit, and alternatively, the Board contends that if the Human Relations Coordinators are municipal employes under MERA, that the Commission should direct an election to determine whether said employes wish to be included in the MTEA or in the unit represented by Psychologists Association of Milwaukee Public Schools 2/; that the ASC contends that said positions are occupied by supervisory employes, and therefore should remain in the unit represented by it; and that the Board, the MTEA, and the ASC have stipulated that should the Human Relations Coordinators be found to be supervisory or managerial employes, then said Human Relations Coordinators should remain in the unit represented by ASC.

7. That the Human Relations Coordinators are part of a Human Relations Program implemented by the Board in 1976 to address problems incident to court ordered desegregation of certain of its schools; that said program is staffed by one Special Assistant to the Superintendent for Human Relations and Staff Development, hereinafter the Program Director, one Human Relations Specialist, five Human Relations Coordinators, two Human Relations Curriculum Developers, three Community Human Relations Coordinators, and nine Human Relations Community Aides; that the Board has designed said Human Relations Program so that the nine Human Relations Community Aides and three Community Human Relations Coordinators report to the five Human Relations Coordinators, who with the two Human Relations Curriculum Developers, report to the Human Relations Specialist, who, in turn, reports to the Program Director.

8. That the desegregation order affected 130 of the schools maintained by the Board; that the Human Relations Coordinators are responsible for consulting with appropriate personnel, students, and parents from individual schools affected by said desegregation order, assessing that school's needs, and developing Human Relations Activities to address those needs; that said Activities take many forms, but often take place as workshops conducted by consultants or artists deemed to have expertise relevant to the human relations problems presented by school desegregation.

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1/ See Milwaukee Board of School Directors, Decision No. 17009-B (5/20/82).

2/ See Milwaukee Board of School Directors, Decision No. 16009-F (1/80).

9. That the Human Relations Coordinators are responsible for the details incident to the development, presentation and evaluation of said Human Relations Activities, including deciding when and where programs will be held, sending out appropriate notices, determining how large an audience will be served by the program, assuring that any necessary equipment is available, assuring that all arrangements necessary to transport and lodge any outside consultants/artists are made, assuring that any necessary assistance from in-house teachers or other personnel is acquired, and arranging for any necessary substitute teachers to take the place of said in-house teachers; and that the Human Relations Coordinators either perform these duties themselves or assign these duties to the members of their staff.

10. That each of the Human Relations Coordinators implement the Human Relations Activities through a staff known as their "team members"; that Russell Kania's team consists of Human Relations Community Aide Sandra Burns; that Gwen Beard's team consists of Community Human Relations Coordinator Paula McClean and Human Relations Community Aide Bernardo Ortega; that Leonard Dale's team consists of Community Human Relations Coordinator Joan Henderson, and Human Relations Community Aides Thomas Dietzen and Marion Paden; that William Jones' team consists of Human Relations Community Aides Maxine Bingenheimer, Judith Schmanski, and Isadore Knox; that Clement Magner's team consists of Community Human Relations Coordinator May Mitchell and Human Relations Community Aides Floyd Blakes and Angelo King; that the Human Relations Coordinators assign the day to day duties of their team members; that the Human Relations Coordinators submit weekly accounts for the hours worked by their team members; and that the Human Relations Coordinators assign the duties of non-team members needed to present individual Human Relations Activities.

11. That Human Relations Coordinator Russell Kania has responsibility for the Integration Through the Arts Program, hereinafter referred to as the INTA-Arts Program, by which Human Relations Activities are presented by performing artists; that said artists performances are designed to provide students a variety of cultural experiences and role models they might not otherwise experience; that Mr. Kania is responsible for developing the INTA--Arts Program in all schools affected by the desegregation order; that pursuant to this responsibility, Mr. Kania developed a formula to apportion the funds budgeted for said program among the schools, and a selection system which allowed each school to exercise some discretion over the selection of an artist; that Mr. Kania determined the slate of artists from which school principals could exercise said discretion; that Mr. Kania assists principals in selecting an artist; and that Mr. Kania's duties afford him little, if any, direct student contact.

12. That the remaining four Human Relations Coordinators have responsibility for developing Human Relations Activities for a specific "cluster" of schools affected by the desegregation order; that pursuant to this responsibility, said four Human Relations Coordinators develop activities which do not duplicate those of the INTA-Arts Program; that each of said four Human Relations Coordinators determines how to allocate the funds available for Human Relations Activities among the individual schools of their respective clusters; and that each of the Human Relations Coordinators who testified spends a minor amount of their working schedule involved in direct student contact.

13. That the budgets which determine the level of activities available to the schools serviced by the Human Relations Coordinators are prepared and implemented in the following manner: The Human Relations Coordinators prepare a written proposal requesting the grant of federal funds. The proposal is then sent to a Research Department in which Board personnel experienced in drafting such proposals check to determine that the proposal has been properly drafted. The proposal is then sent to the federal agency, which then allocates those funds deemed appropriate for the proposal. From the federal funds thus made available, together with any funds contributed by the Board, the Human Relations Coordinators collectively allocate the money available to each individual coordinator. Then the Human Relations Coordinators separately plan their Human Relations Activities for the school year. Each of the Human Relations Coordinators then establish contact with the consultants/artists they deem desirable for a specific program. The Human Relations Coordinator will then determine the consultants/artists' availability on a specific date, and will then acquire a tentative commitment from the consultant/artist. On completion of a full year's program, the Human Relations Coordinator submit the planned activities for Board and any necessary federal approval. Prior to implementation, the program, including artist/consultant selections and expenditures, is reviewed by the Program

Director. Once approved, the Human Relations Coordinators execute the contracts with the consultants/artists, and thus finalize the year's activities.

14. That federal grant guidelines establish the maximum amount Human Relations Coordinators may spend on fees or on any reimbursable expenses of a consultant/artist; that within guideline restraints, the Human Relations Coordinators exercise almost unlimited discretion over what consultants/artists will be utilized; that within Board guidelines the Human Relations Coordinators negotiate the fee a consultant/artist will receive; that said fee guidelines vary with the qualifications of a consultant/artist, and the Human Relations Coordinators determine, with little oversight, how qualified a consultant/artist is, and thus which fee limit shall apply to said consultant/artist; and that the Human Relations Coordinators can initiate procedures by which the fee limits can be exceeded for a specific consultant/artist.

15. That for the period from February to June of 1981, the five Human Relations Coordinators were responsible for the following budgeted expenditures (all figures are approximations):

Russell Kania:	\$55,000
Clement Wagner:	\$20,000
Gwen Beard:	\$ 3,300
William Jones:	\$ 2,150
Leonard Dale:	\$ 925

16. That the hiring of personnel for the Human Relations Program is administered by the Board's Division of Personnel; that the Division of Personnel does so by establishing a Screening Committee to review applications, to select and interview the most promising applicants, and to recommend the most qualified applicant to the Division of Personnel, which in turn makes a recommendation to the School Board; that no Human Relations Coordinator has participated in this process as a member of the Screening Committee; that the Program Director has, however, participated on said Committee for positions within the Human Relations Program; that said Director, while serving on the Screening Committee, will ask the Human Relations Coordinator affected by the job opening to review the resumes of the applicants or to interview a job candidate; that following such review or interview, said Human Relations Coordinator will communicate a recommendation to the Program Director; and that the recommendations made by individual Human Relations Coordinators have been followed with respect to the assignment, following transfer of Paula McClean and Mary Mitchell as Community Human Relations Coordinators, and with respect to the hiring of Jennie Ferreira as a Human Relations Community Aide.

17. That a Human Relations Coordinator, as indicated in the position description " . . . assists local school administrators in resolving grievances of students, parents and staff"; that few actual grievances have been presented to the Human Relations Coordinators; but that said Human Relations Coordinators have informally resolved grievances of their team members.

18. That the Human Relations Coordinators have authority to issue suspensions and letters of reprimand or commendation for their team members without prior consultation with any Board personnel; that the authority to suspend is apparent only, and has never, in fact, been exercised; that Human Relations Coordinators Leonard Dale and William Jones have issued letters of reprimand concerning Thomas Dietzen, Joan Henderson, and Isadore Knox; that Human Relations Coordinator Clement Wagner issued letters of commendation to Paula McClean and Floyd Blakes; but that the precise effect of said letters on the affected employe's work record cannot be determined.

19. That the position description of Human Relations Coordinator includes the following:

**MAJOR RESPONSIBILITIES AND DUTIES:**

. . .

2. Recommends, organizes and supervises members of local school human relations teams; assigns specific responsibilities in human relations to team members.

3. Recommends, monitors and evaluates teachers and aides who are members of the human relations teams.
  4. Supervises and evaluates teachers who implement human relations programming through the regular K-12 curriculum.
  5. Recommends, supervises and evaluates teachers who implement the high school human relations courses.
- . . .
7. Supervises and evaluates staff members assigned to the Human Relations team.
  8. Identifies, creates, and evaluates materials for use by participants in human relations workshops and programs.
  9. Recommends, supervises, and evaluates local school staff for human relations assignments to the Human Relations course and in the K-12 affective education curriculum.

20. That the Human Relations Coordinators have an ongoing responsibility to evaluate the personnel and the materials associated with the Human Relations Activities they develop; that the performance of a teacher, who participates in the presentation of a Human Relations Activity, is evaluated informally with said teacher's principal; that by present practice, the performance of team members is evaluated in writing by the Human Relations Coordinator who heads said team, and submitted to the Program Director; that the Program Director approves said evaluations and issues them under her signature; and that the evaluations thus submitted for Thomas Dietzen, Isadore Knox, Marion Paden, Bernardo Ortega, and Sandra Burns were issued by the Program Director as written by the Human Relations Coordinator. 3/

21. That for those periods in which the Human Relations Specialist is absent, a Human Relations Coordinator will supervise the clerical employes otherwise supervised by the Human Relations Specialist.

22. That the pay ranges for the positions of Human Relations Coordinator and of Community Relations Coordinator are as follows:

<u>POSITION</u>	<u>ANNUAL MINIMUM</u>	<u>ANNUAL MAXIMUM</u>	<u>ANNUAL INCREMENT</u>
Human Relations Coordinator July 1, 1980 to June 30, 1981	19,929	29,356	839
Community Relations Coordinator January 1, 1980 to December 31, 1980	17,693	26,961	772
Human Relations Coordinator July 1, 1981 to June 30, 1982	21,224	31,264	894
Community Relations Coordinator January 1, 1981 to December 31, 1981	19,153	29,185	836

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3/ The present collective bargaining agreement between the Board and the MTEA states at Part IV, Section Q, 1:

. . . Bargaining unit employees shall not evaluate other bargaining unit employees.

23. That the occupants of the position of Human Relations Coordinator exercises supervisory and managerial responsibilities in sufficient combination and degree so as to make them supervisory and managerial employees.

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

CONCLUSION OF LAW

That the occupants of the positions of Human Relations Coordinator are supervisory and managerial employees and therefore are not "municipal employees" 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 4/

That the position of Human Relations Coordinator be, and the same hereby is, excluded from the bargaining unit of employees in the employ of the Milwaukee Board of School Directors presently represented by Milwaukee Teachers Education Association.

Given under our hands and seal at the City of  
Madison, Wisconsin this 27th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli /s/  
Gary L. Covelli, Chairman

Morris Slavney /s/  
Morris Slavney, Commissioner

Herman Torosian /s/  
Herman Torosian, Commissioner

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4/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of  
(Continued on page 7)

4/ (Continued)

the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, 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 rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 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.

MEMORANDUM ACCOMPANYING FINDINGS OF  
FACT, CONCLUSION OF LAW AND ORDER

MTEA claims that the position of Human Relations Coordinator should be included in the "professional employe" unit represented by it. MTEA contends that said position is occupied by professionals sharing a community of interest with, and performing similar functions as employes included in the teacher's bargaining unit. The Board contends that said position combines extensive supervisory and managerial responsibility and thus cannot be included in the teachers collective bargaining unit. ASC also argues that said position is supervisory.

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

Managerial Employes . . . have been excluded from MERA coverage on the basis that their relationship to management imbues them with interest significantly at variance with those of other employes . . . (M)anagerial employes participate in the formulation, determination and implementation of management policy . . . In addition, managerial status may be related to a position's effective authority to commit the Employer's resources. 5/

Specifically regarding the effective authority to commit the Employer's resources, the Commission has 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. 6/

This power must not be "ministerial", such as "the authority to spend money from a certain account for a specific purpose . . ." 7/

The Human Relations Coordinators' participation in the process by which the Human Relations Program's budget for Human Relations Activities is created and implemented cannot be characterized as ministerial. Said budget is subject to School Board and Federal approval, and explicit Federal guidelines set limits for consultants/artists' fees and reimbursable expenses. However, the Human Relations Coordinators prepare the proposal which is ultimately sent to the federal agency for the appropriation of funds. More importantly, the Human Relations Coordinators exercise significant discretion in determining what Human Relations Activities will occur, in selecting the consultants/artists to present said activities, in determining the consultants/artists' qualifications, and thus the applicable fee guideline for said consultant/artist, and in negotiating the actual fee. In addition, the Human Relations Coordinators play a vital role in allocating funds for their programs and for each school said Coordinator is responsible for serving. This power to commit Board resources is, at a minimum, the authority to allocate funds for differing program purposes . . ."

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5/ City of Cudahy (Fire Department), Decision No. 18502 (3/81) at 8; see Milwaukee v. WERC, 71 Wis. 2d 709, 717 (1976).

6/ Shawano County Sheriff's Department 15257 (3/77) at 3.

7/ Id.



Each of the Human Relations Coordinators oversees amounts of money. The discretion exercised by each of the coordinators has a substantial impact upon District programming. For instance, Mr. Kania's formula for distribution of artist/consultant monies determines the kind and degree of access to the program to be enjoyed by the parents, students, and faculty connected with any given school. In a similar vein, the negotiations skills of a coordinator (i.e. persuading an artist to accept a smaller fee) determines the number of programs the school system will enjoy.

The Commission is not required to separately analyze whether the Human Relations Coordinators are supervisors or managers in order to determine whether the interests of said positions are more aligned with management than with the bargaining unit. 8/ Thus any supervisory authority possessed by the Human Relations Coordinators may be considered in conjunction with the managerial authority discussed above. 9/

As noted in the Findings of Fact, the Human Relations Coordinators do exercise supervisory authority in assigning the duties of their team members, and in accounting for their hours, in informally resolving the grievances of team members, in issuing to team members letters of commendation and of reprimand without the prior consultation of any other Board personnel. They also possess some influence relative to the hire or placement of certain applicants into the Human Relations Program, and exercise an evaluative responsibility.

These indicators of supervisory status when combined with the Human Relations Coordinators' managerial authority, indicate that the functions of the occupants are more aligned with management than with the bargaining unit. Thus, the Human Relations Coordinators are managerial employees, excluded from the definition of "municipal employe" in Section 111.70 (1)(b) of the Municipal Employment Relations Act.

Based on all of the above, the Commission has excluded the position of Human Relations Coordinator from the bargaining unit represented by MTEA, and, in accordance with the stipulation of the parties, said position remains in the ASC unit.

Dated at Madison, Wisconsin this 27th day of July, 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli /s/  
Gary L. Covelli, Chairman

Morris Slavney /s/  
Morris Slavney, Commissioner

Herman Torosian /s/  
Herman Torosian, Commissioner

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8/ Lakeland Union High School District, (17677) 4/80 at 6; Mid-State VTAE District No. 14, (16094-C) 4/78 at 4-5.

9/ Id.