

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

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EAU CLAIRE AREA SCHOOL DISTRICT :

:

Involving Certain Employes of : Case 14

: No. 43181 ME-378

: Decision No. 17124-A

EAU CLAIRE AREA SCHOOL DISTRICT :

:

Appearances:

Mr. Thomas Fiedler, Assistant Superintendent for Personnel, Eau Claire Area School District, 500 Main Street, Eau Claire, Wisconsin 54701, for the District.
Mr. Steven Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 162, Eau Claire, Wisconsin 54702, for the Union.

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

The Eau Claire Area School District having, on November 2, 1989, filed a petition requesting the Wisconsin Employment Relations Commission to clarify two existing certified bargaining units so as to exclude the position of Purchasing and Costing Clerk-Food Service from an existing bargaining unit consisting of all employes of the Eau Claire Area School District employed in the School Lunch Program represented by AFSCME, Local 560-B, and to include said position in an existing unit consisting of clerical, data processing personnel and school aides represented by WFT, Local 4018; and a hearing having been held on January 16, 1990, in Eau Claire, Wisconsin, before Examiner Coleen A. Burns, a member of the Commission's staff; and a stenographic transcript of the proceedings having been completed and received January 30, 1990; and the Eau Claire Area School District having argued orally at hearing in lieu of filing a post-hearing brief; and the Union having submitted a written brief at the hearing; and the Commission being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Eau Claire Area School District, hereinafter the District, is a municipal employer and has its principal offices at 500 Main Street, Eau Claire, Wisconsin 54701.

2. That Wisconsin Council 40, AFSCME, AFL-CIO, hereafter School Lunch Program Employees or the AFSCME Union, is a labor organization and has its principal offices at P.O. Box 162, Eau Claire, Wisconsin 54702.

3. That on January 13, 1975, the AFSCME Union filed a petition for a representation election among "all school lunch program employees;" that the parties subsequently stipulated to the following unit:

All regular full-time and regular part-time employees excluding the school lunch supervisor, substitute and temporary employees and all other employees of the employer (pending head cook determination).

and that on May 6, 1975, the Commission certified the AFSCME Union as the exclusive bargaining representative of employes in the following bargaining unit:

All regular full-time and regular part-time employes of Eau Claire Joint School District No. 5 employed in the school lunch program, including laundry worker, but excluding School Lunch Supervisor, First Cooks, Lunch-room Supervisors, substitute and temporary employes, and all other employes of the Municipal Employer.

4. That on June 26, 1979, Eau Claire Support Staff Federation, WFT, 3/ hereafter WFT Union, and the District filed a Stipulation for Election among:

All regular full-time and regular part-time clerical and data

1/ On December 19, 1989, Examiner Burns mailed a Notice of Hearing to William Kalin, Staff Representative, Wisconsin Federation of Teachers, AFT, AFL-CIO, 1703 Logan Avenue, Superior, Wisconsin 54880, the representative for the Support Staff bargaining unit. There was no appearance on behalf of the Support Staff union at hearing in the instant matter.

processing personnel and school aides, but excluding confidential and supervisory personnel.

and that on August 15, 1979 the Commission certified the WFT Union as the exclusive collective bargaining representative of employes in said bargaining unit.

5. That on April 19, 1978, the District created the position of Assistant to Head Cook (DeLong); hereinafter Assistant to Head Cook; that the District and the AFSCME Union voluntarily agreed to place the position within the bargaining unit of School Lunch Program employes; that Janet Forss was employed in that position through the 1978-89 school year; that at the beginning of the 1980 school year, Eva Lang transferred into said position and remained in the position until the 1988-89 school year; and that the position description for Assistant to Head Cook was as follows:

POSITION TITLE: ASSISTANT TO HEAD COOK (DELONG)

I. ACCOUNTABILITY OBJECTIVES: Objectives of the position include: (1) inventory control; (2) costing recipes, menus and supplies; (3) assisting with ordering.

II. POSITION CHARACTERISTICS:

Recruited by: Assistant Superintendent for Personnel

Salary: Hourly, on schedule, at Cashier rate

Length of work day: Flexible, approximately 3 to 7 hours.

III. POSITION RELATIONSHIPS:

Reports to: Head Cook at DeLong Junior High, Director of Food Services.

Coordinates with: Head Cook, Director of Food Services, building principal, Assistant Superintendent for Finance, business office personnel, other school lunch staff.

Type of coordination: Ordering, inventory, and other phases of school lunch operation which may be assigned as a responsibility of the position.

Supervises: Storeroom

IV. POSITION QUALIFICATIONS:

A. Required: Some experience in food service, basic record keeping skills and mathematics required for inventory and cost control. Satisfactory health certificate, when hired, including tuberculin check.

B. Desired: Experience in food service inventory and cost control.

C. Special requirements of the position: Ability to work with minimum of supervision; ability to make mature judgments; ability to work at a variety of duties in food service; human relations skills; physical stamina for the position.

V. POSITION RESPONSIBILITIES:

A. Works with Director of Food Services on coordinating of ordering of supplies.

B. Order supplies.

C. Evaluates and costs menus and prices foods and supplies.

D. Inventory control: inventories all warehouse and food storage areas.

E. Checks and dates food in and out of storeroom.

F. Records surplus commodities in cold storage and warehouse.

G. Assists with mobile meals, head start program foods and other areas of food service.

H. Attends meetings, workshops, conventions.

I. Performs other duties as assigned.

6. That the Assistant to Head Cook worked at the District's DeLong Junior High School; that, on a quarterly basis, the Assistant to Head Cook counted and recorded the inventory for the Food Services Program; that the inventory data was then submitted to the District's central office; that the Assistant to Head Cook received invoices, recorded materials received and the costs thereof and annually calculated financial totals for the Food Services Program; that the Assistant to Head Cook occasionally substituted as Cashier on the food line; that the Assistant to Head Cook recorded the District's preschool Head Start food program items; that the Assistant to Head Cook recorded surplus food items received and used; that under the AFSCME Union contract for its 1989-1990 school year, the Assistant to Head Cook position had a salary range of \$7.58 to \$7.78 per hour; that the Assistant to Head Cook worked from 7:00 a.m. to 2:00 pm. each work day, ten months each year; and that the Assistant to Head Cook was under the direct supervision of the Kitchen Manager at DeLong.

7. That on February 27, 1989, Mary Jo Tuckwell was employed with the District as Director of School Food Services; that Tuckwell supervises employees from various bargaining units, including those represented by the AFSCME Union and the WFT Union; that Tuckwell implemented a program to require more accurate and timely data on food services costs and inventories; that as a result of that change, the position entitled Assistant to Head Cook was eliminated at the end of the 1988-1989 school year and the position entitled Purchasing and Costing Clerk-Food Service, hereafter Purchasing and Costing Clerk, was created; that the position description for the Purchasing and Costing Clerk is as follows:

POSITION TITLE: PURCHASING AND COSTING CLERK -
FOOD SERVICE

I. ACCOUNTABILITY OBJECTIVES: Objectives of the position include: (1) inventory control; (2) costing recipes, menus and supplies; (3) assisting with ordering.

II. POSITION CHARACTERISTICS:

Recruited by: Assistant Superintendent for
Personnel
Salary: Hourly, on schedule
Length of Work 8 hours per day, 194+11 days

III. POSITION RELATIONSHIPS:

Reports to: Director of Food Services.
Coordinates with: Director of Food Services, Food Service
Bookkeeper, kitchen
managers, other school
lunch staff.
Type of coordination: Ordering, inventory, and other
phases of school Food
Service operation which
may be assigned as a
responsibility of the
position.

IV. POSITION QUALIFICATIONS:

- A. Required: Basic record keeping skills and mathematics
required for inventory and cost control.
- B. Desired: Experience or training in food service,
experience in food service inventory and cost
control.
- C. Special requirements of the position: Ability to use
computer technology. Ability to work with
minimum of supervision; ability to make
mature judgments; ability to work at a
variety of duties in food service; human
relations skills; physical stamina for the
position.

V. POSITION RESPONSIBILITIES:

- A. Works with Director of Food Services on coordinating of
ordering of food and supplies.
- B. Costs recipes and menus. Prepares cost sheets on supplies
and food. Completes cost reports for all
programs.
- C. Takes monthly inventories of all warehouse and food storage
areas. Reports inventory levels to kitchen
managers and Director of Food Services.
- D. Checks and dates food in and out of storeroom.
- E. Assists Director of Food Services in establishing and
maintaining a computerized inventory control
system.
- F. Records surplus commodities in cold storage and warehouse.
- G. Assists with costing of mobile meals, head start program
foods and other areas of food service.
- H. Attends meetings, workshops, conventions.
- I. Performs other duties as assigned.

that since November 27, 1989, Catherine Davis has filled the position of Purchasing and Costing Clerk, pending the Commission's decision in the instant matter; and that the position of Purchasing and Costing Clerk has been subject to the terms and conditions of the WFT Union collective bargaining agreement.

8. That the Purchasing and Costing Clerk is located in the office of the Director of Food Services, in the District's central administrative offices; that the Purchasing and Costing Clerk compiles, collates and analyzes data for the Food Services Program; that the Purchasing and Costing Clerk records costs of supplies and labor, calculates meal costs and break-even points, assists with ordering food services supplies, interacts with outside Food Service vendors, types purchase orders, and assists in developing procedures for inventory and cost control; that the Purchasing and Costing Clerk uses a computer to input, calculate, and extract data on Food Service Program inventories and costs; that the Purchasing and Costing Clerk regularly telephones School Lunch Program employees to verify records; that the Purchasing

and Costing Clerk regularly travels to the District's schools to determine inventories; that the Purchasing and Costing Clerk works closely with the Food Service Bookkeeper, a Support Staff employe who also works in the District's central administrative offices; that a number of the Support Staff employes are located in the District's central administrative offices; that at present, the District is paying the Purchasing Costing Clerk according to the WFT Union salary schedule, at a pay range from \$7.51 to \$8.71 per hour; that the Purchasing and Costing Clerk works from 8:00 a.m. to 4:30 p.m. each workday to be available to outside vendors; and that the Purchasing and Costing Clerk works ten months each year.

9. That the School Lunch Program employes work various schedules between 6:00 a.m. and 2:30 p.m.; and that the Support Staff employes generally work between 8:00 a.m. and 4:30 p.m.

10. That the position of Purchasing and Costing Clerk is not sufficiently distinguishable from the position of Assistant to Head Cook so as to conclude that there have been changed circumstances which have materially affected the position's bargaining unit status.

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

CONCLUSION OF LAW

1. That the position of Purchasing and Costing Clerk - Food Service is appropriately included in the AFSCME Union bargaining unit.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 2/

That the position of Purchasing and Costing Clerk - Food Service be, and the same hereby is, included in the certified collective bargaining unit described in Finding of Fact 3, represented by Wisconsin Council 40, AFSCME, AFL-CIO.

Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of April,

1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

(Footnote 2/ on page 6)

2/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all

parties under s. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

DISTRICT'S POSITION

The District argues that there is a substantial difference between the job duties of the previous Assistant to Head Cook position and the current Purchasing and Costing Clerk position. The Assistant to Head Cook simply tabulated data, while the Purchasing and Costing Clerk develops records which allow for greater analysis by management. The District further contends that the Purchasing and Costing Clerk has a greater community of interest with the WFT Union unit than the AFSCME Union unit. The responsibilities of the Purchasing and Costing Clerk are similar in nature to the WFT Union position of Food Service Bookkeeper, and the Purchasing Costing Clerk also works closely with the Bookkeeper. In addition, the Purchasing and Costing Clerk works in the central administrative offices where many of the WFT Union employees also work. The District maintains that it has a greater chance of obtaining qualified internal applicants for the disputed position if the position is placed in the WFT Union bargaining unit rather than in the AFSCME Union unit and that the Purchasing and Costing Clerk requires a knowledge of computers, involving skills ability and training which are more similar to the clerical employees represented by the WFT Union than the AFSCME Union school lunch program employees. The District contends, therefore, that the Commission should include the Purchasing and Costing Clerk in the WFT Union unit.

UNION'S POSITION

The AFSCME Union contends that the Assistant to Head Cook was in existence on May 6, 1975, when the school lunch program unit was originally certified by the Commission and that there continues to be a community of interest between the disputed position and the school lunch program employees. To move the position into the WFT Union unit would cause undue fragmentation. The only change in the duties between the Assistant to the Head Cook and the Purchasing and Costing Clerk is the computerization of certain tasks. Other positions in the school lunch program unit handle money and maintain records and should receive training in computers. Accordingly, the Commission should allow the Purchasing and Costing Clerk to continue in the school lunch bargaining unit.

BACKGROUND

The school lunch program bargaining unit represented by AFSCME was certified by the Commission in 1975, pursuant to a stipulation for election. In 1978, 4/ the District created the position of Assistant to Head Cook and the District and the AFSCME Union voluntarily agreed to include the position in the AFSCME Union bargaining unit. The position remained in the AFSCME Union unit until the 1988-89 school year, when the position entitled Assistant to Head Cook (DeLong), hereinafter Assistant to Head Cook was eliminated. The District then created a position entitled Purchasing and Costing Clerk - Food Service and filed a petition for unit clarification seeking to include the position in the support staff bargaining unit represented by the WFT Union. The AFSCME Union, claiming that the Purchasing and Costing Clerk - Food Service position is essentially the same position as the Assistant to Head Cook, maintains that the position is appropriately included in the school lunch program bargaining unit.

DISCUSSION

The parties voluntarily agreed to include the Assistant to Head Cook position in the collective bargaining unit represented by the AFSCME Union. The Commission will not alter the composition of a bargaining unit agreed upon by the parties by excluding positions over the objection of one of the parties unless:

- 1.The position(s) in dispute did not exist at the time of the agreement; or
- 2.The position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential etc. or
- 3.The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; or
- 4.The existing unit is repugnant to the Act. 5/

3/ While the Union argues that the Assistant to Head Cook was in existence at the time the School Lunch Program unit was certified, the record reflects that the position was created in 1978, as noted above.

4/ City of Sheboygan, Dec. No. 7378-A (WERC, 5/89).

The Union maintains that the position of Purchasing and Costing Clerk - Food Service is essentially the same position as Assistant to Head Cook and, thus, appropriately included in the AFSCME Union bargaining unit. The District maintains that there are changed circumstances which materially affect the position's bargaining unit status.

The District maintains that there is a substantial difference between the duties of the Purchasing and Costing Clerk - Food Service and the duties of the Assistant to Head Cook. 6/ The record, however, demonstrates otherwise. As a comparison of the two position descriptions reveals, each position has the identical statement of "Accountability Objectives," i.e., "(1) inventory control; (2) costing recipes, menus and supplies; (3) assisting with ordering."

Each position has essentially the same "Type of coordination" listing. Of the nine "Position Responsibilities" listed on the Purchasing and Costing Clerk - Food Service position description, six, i.e., A, D, F, G, H, and I, are nearly identical to those listed on the Assistant to Head Cook position description. The primary differences in "Position Responsibilities" are as follows:

<u>Purchasing and Costing Clerk</u>	<u>Assistant to Head Cook</u>
(Not in Purchasing and Costing Clerk job description but present as part of "Type of Coordination" entry.	B. Order supplies
B. Costs recipes and menus. Prepares cost sheets on supplies and food. Completes cost reports for all programs.	C. Evaluates and costs menus and prices foods and supplies.
C. Takes monthly inventories of all warehouse and food storage areas. Reports inventory levels to kitchen managers and Director of Food Services.	D. Inventory control: inventories all warehouse and food storage areas.
E. Assists Director of Food Services in establishing and maintaining a computerized inventory control system.	(Not in Assistant to Head Cook job description.)

Upon comparison of these "differences," the Commission is persuaded that these "differences" are more a function of form than substance.

It is true that the employees who occupied the position of Assistant to Head Cook did not perform all of the duties which will be, or have been, assigned to the Purchasing and Costing Clerk - Food Service. It is equally true that the Purchasing and Costing Clerk - Food Service will be required to maintain more comprehensive records and to subject these records to a more detailed analysis. However, the duties which have been, or will be, assigned to the Purchasing and Costing Clerk - Food Service fall within the scope of the duties and responsibilities listed on the Assistant to Head Cook position description. Since the Purchasing and Costing Clerk - Food Service is performing, or will be performing, duties which have been recognized to be Assistant to Head Cook duties, we do not consider the difference in the duties sufficient to constitute a changed circumstance which materially affects the unit status of the employe performing these duties.

As the District argues, the Purchasing and Costing Clerk - Food Service, unlike the Assistant to Head Cook, uses a computer to perform requisite duties and the position description of the Purchasing and Costing Clerk - Food Service, unlike that of the Assistant to Head Cook, requires "Ability to use computer technology." While the change to a computerized system undoubtedly permits the employe to perform the requisite duties in a more efficient manner, it has not altered the underlying nature of the duties.

In summary, it is evident that the District's decision to eliminate the position entitled Assistant to Head Cook position and recreate it as the position entitled Purchasing and Costing Clerk - Food Service was motivated by a desire to provide the Director of School Food Services with more accurate and timely information on inventory, costs of supplies, and meal costs. To further that end, the Purchasing and Costing Clerk - Food Service position was located in the office of the Director of School Food Services located in the District's central administrative offices, the hours of work were established to correspond to the normal hours of the District's vendors, and the District changed from a manual to a computerized system. However, the position entitled Purchasing and Costing Clerk - Food Service like the position entitled Assistant to Head Cook (DeLong) is within the Food Services Program and the

5/ The District also contends that there is a greater chance of obtaining qualified internal applicants if the position is placed in the WFT support staff unit. However, the existence or non-existence of qualified internal candidates is not relevant to the determination of the instant dispute.

employee occupying the "new" position is subject to the direction and control of a Food Services supervisor. Additionally, the duties assigned to the "new" position fall within the scope of the duties and responsibilities which had been previously assigned to the position entitled Assistant to Head Cook (DeLong). We do not find that there have been any changed circumstances which have materially affected the unit status of the position in dispute. That is, the position entitled Purchasing and Costing Clerk - Food Service is, in all essential respects, the position which had previously been entitled Assistant to Head Cook (DeLong). Accordingly, we have ordered that the position of Purchasing and Costing Clerk - Food Service be included in the bargaining unit represented by the AFSCME Union.

Dated at Madison, Wisconsin this 17th day of April, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner