

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
MANITOWOC EDUCATION ASSOCIATION : Case XVIII  
Involving Certain Employes of : No. 23619 ME-1589  
MANITOWOC PUBLIC SCHOOL DISTRICT : Decision No. 17200  
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Appearances:

Nash, Spindler, Dean & Grimstad, Attorneys at Law, by Mr. John M. Spindler, on behalf of the District.  
Kelly & Haus, Attorneys at Law, by Mr. David B. Nance, on behalf of the Association.

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

The Manitowoc Education Association, herein the Association, filed the instant petition with the Wisconsin Employment Relations Commission, herein Commission, wherein it requested that certain department chairpersons and assistant principals be included in the established collective bargaining unit. Hearing was held in Manitowoc, Wisconsin on December 18, 1979 and January 9, 1979 before Hearing Examiner Stuart S. Mukamal. The parties filed briefs and reply briefs. The Commission has considered the evidence and the arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Manitowoc Education Association, herein Association, is a labor organization which represents, for collective bargaining purposes, certain personnel employed by the Manitowoc Public School District.
2. The Manitowoc Public School District, herein the District, is a municipal employer which operates a school system in Manitowoc, Wisconsin.
3. The District for a number of years has voluntarily recognized the Association as the collective bargaining representative of employes in a bargaining unit described in the parties 1978-1979 collective bargaining agreement as follows:

The Board hereby recognizes the MEA, an affiliate of the National Education Association, Wisconsin Education Council and Kettle Moraine UniServ Council, as the exclusive negotiating representatives for persons certified and employed as teachers, librarians, and counselors (but excluding any other persons employed by the Board) on matters of wages, hours and conditions of employment for such represented. The term "teacher" as used elsewhere in this Agreement, shall mean a bargaining unit employe, as defined in this section.

No. 17200

4. Prior to 1972, some department heads were apparently included in the collective bargaining unit. Since from at least 1972 to the present, department heads and assistant principals have not been included in the collective bargaining unit. At the time of the instant hearing there were fourteen department heads and two assistant principals. The record shows that all of these individuals perform substantial supervisory and confidential duties.

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

CONCLUSION OF LAW

That department heads and assistant principals are supervisory and confidential personnel who should be excluded from the appropriate bargaining unit.

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


ORDER CLARIFYING BARGAINING UNIT


The department heads and assistant principals employed by the District shall be, and hereby are, excluded from the appropriate bargaining unit.

Given under our hands and seal at the  
City of Madison, Wisconsin this 10th  
day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

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

The Association alleges that eleven department heads 1/ and two assistant principals should be included in the collective bargaining unit. In this connection, it concedes that these individuals occasionally are involved in joint decisions relating to the hiring, firing and transferring of unit personnel. However, the Association contends that such joint decision making "is always diluted by the involvement of many other parties" and that, as a result, said individuals lack the authority to effectuate the decisions by themselves.

The District, on the other hand, maintains that the disputed positions are either supervisory, managerial, or confidential employees. The District also argues that said positions have been excluded from the unit since 1972 and that the Association now seeks their belated inclusion for the sole purpose of collecting fair share dues from them.

In resolving these issues, the Commission first notes that all of the disputed positions are on the District's Administrative Council. The Council is composed of all the approximately thirty or so administrators in the District and it includes department heads, elementary and secondary principals, assistant principals and central office staff. The Council meets on a monthly basis and periodically meets more frequently. The Council generally deals with the management of the District. In addition, it is involved in collective bargaining negotiations. Thus, the Council is asked how proposed contract language would affect the District, what changes should be made in the contract, whether it is in favor of a particular item, or whether a particular item should be reworded. The Council is also advised of the District's bottom line in negotiations. Moreover, the District has a policy where the department heads serve on a rotating basis on the District's bargaining team. Thus, three of the disputed department heads herein -- Vernon Hansen, Courtney Leonard, and Harold Beckman -- have in the past served on the District's bargaining team.

In addition, the record also shows that all of the disputed positions herein have the effective power to hire. In this connection, it is true, as the Association points out, that hiring decisions are generally made on a Committee-wide basis and that other administrative personnel also have a voice in the hiring process. However, the mere fact that these individuals are involved in a joint hiring process does not diminish the fact that they do have the effective power to hire. In fact, the record reveals several instances of where department heads have prevented the hiring of individuals who other Committee members sought to hire. On the other hand, there have been no instances of where individuals have been hired over the objections of a department head.

By the same token, the positions herein also have the effective power to fire. Thus, for example, the department heads each year recommend whether the teachers in their departments should be renewed or non-renewed. In this connection, they periodically evaluate teachers. The assistant principals also have the effective power to fire, and they, too, evaluate teachers.

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1/ The Association agrees that three non-teaching department heads -- Jay Wilson, Don Jorgenson, and Lowell LaLeike -- should be excluded from the unit.

The department heads also have the effective power to assign classes and to transfer teachers from one building to another.

The department heads prepare the budget for their respective departments and they have the discretion to make cuts in the budget if they are needed. The department heads also help prepare summer programs and they have the authority to decide which teachers should be employed during the summer.

The department heads handle grievances and they have the effective power to resolve said grievances if the grievance involves a matter over which the department has control. In this regard, Article 6, Section D, of the collective bargaining agreement specifies that grievances at Level I can be brought to the attention of the department head or school principal.

The department heads are not paid pursuant to the teacher's salary schedule. Instead, all of the department heads (with the exception of one who was newly hired) receive salaries which were, generally, in excess of those provided for in the teacher's salary schedule. In addition, unlike the teacher's, all of the department heads, except three, are on a fifty-two week contract. The three exceptions work on either a forty-two or forty-four week contract. During the summer, all of the department heads exclusively spend their time on administrative duties.

With the foregoing general principles in mind, it is now appropriate to consider, in detail, the teaching duties of the disputed employees. Ron Stokes, the head of the art department, supervises the ten teachers under him and teaches four periods a day. Darlene Wotachek, the head of the business education department, supervises ten teachers and teaches four periods a day. Harold Beckman, the head of the foreign language department, supervises seven teachers and teaches four periods per day. William Rienks, the head of the guidance department, supervises three individuals and does not teach any classes. He does, however, spend approximately fifty percent of his time advising students. Rita LaFond, the head of the home economics department, supervises eight individuals and teaches four classes a day. David Olson, the head of the language arts department, supervises twenty-four teachers and teaches three classes a day. Courtney Leonard, the head of the math department, supervises nineteen teachers and teaches three classes a day. Dean Torkelson, the head of the music department, supervises fourteen teachers and teaches one class a day. He also gives music lessons. Ned Hodgson, the head of the physical education department, supervises seventeen teachers, and teaches four classes a day. Vernon Hansen, the head of the science department, supervises twenty teachers and teaches three classes a day. Assistant principal, Douglas Molzahn, teaches two periods a day and has one preparation period. The standard school day consists of five teaching periods, one study hall, and one preparation period.


By virtue of the above, there is no question but that the department heads and assistant principals do spend part of their time on teaching duties. At the same time, however, it is abundantly clear that the disputed positions possess substantial supervisory powers. Thus, to one degree or another, they: (1) serve on the Administrative Council where they deal with confidential collective bargaining negotiations with the Association; (2) at times have served on the District's bargaining team; and (3) have the effective power to hire, fire, transfer, assign work, evaluate, and to handle grievances. In light of these

latter functions, it follows that the disputed employes are supervisors and confidential employes under Section 111.70(1)(o) of the Municipal Employment Relations Act. They are, therefore, excluded from the appropriate unit.

Dated at Madison, Wisconsin this 10th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

