

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

UNITED LAKELAND EDUCATORS :

Involving Certain Employes of :

LAKELAND UNION HIGH SCHOOL DISTRICT :

Case VI

No. 23908 ME-1621

Decision No. 17677

Appearances:

Ms. Judith Neumann, Staff Counsel, Wisconsin Education
Association Council, appearing on behalf of the
Petitioner.

Mulcahy & Wherry, S.C., Attorneys at Law, by Ms. Diana
L. Waterman, appearing on behalf of the School
District.

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

United Lakeland Educators, having, on December 20, 1978 filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to clarify a voluntarily recognized collective bargaining unit consisting of certain certified teaching employes of the Lakeland Union High School District; and United Lakeland Educators, having, on March 20, 1979, filed an amended petition regarding same; and hearing on said matter having been held on May 16, 1979 and June 13, 1979 at Minocqua, Wisconsin, before Examiner Dennis P. McGilligan; and a transcript having been prepared and the parties having completed their briefing schedule on October 9, 1979; and the Commission having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That United Lakeland Educators, hereinafter referred to as the ULE, is a labor organization and has its offices at Rhinelander, Wisconsin.

2. That Lakeland Union High School District, hereinafter referred to as the District, is a Municipal Employer and has its offices at Minocqua, Wisconsin.

3. That in 1976 the District voluntarily recognized the ULE as the collective bargaining representative of its teaching personnel in a unit described as follows:

. . . all regular full-time and regular part-time certified teaching employees of the District, including counselors, librarians and staff on sabbatical leave, and excluding the principal, vice-principal, District Administrator and other supervisory and managerial personnel, clerical, secretarial, custodial and cooks.

4. That on December 20, 1978 the ULE filed a petition with the Wisconsin Employment Relations Commission to clarify said unit to determine whether the positions of Supervisor of In-Plant Duplicating, Tutor, Title I Math and Full-Time Substitute Teacher are included in said unit; that on January 16, 1979 the District filed a Motion to Dismiss in the matter, on the basis that the unit exists as a result of being voluntarily recognized and excludes the disputed positions, and that the District opposes the proposed expansion of the unit without an election; that thereafter on March 20, 1979 the ULE filed an amended petition for unit clarification with the Commission, or in the alternative an election petition; that said petition, in addition to setting forth the above positions, as being in issue, also included the position of HomeSchool Coordinator for Native American students; and that the employees filling the aforementioned positions constitute all of the remaining unrepresented professional employees of the District who work with students and teachers.

5. That hearings in the matter were held on May 16, 1979 and June 13, 1979 at Minocqua, Wisconsin; that the only position remaining in dispute is that of Supervisor of In-Plant Duplicating currently held by Kenneth J. Ondrus; that all other issues were disposed of through stipulation by the parties at the hearing of May 16, 1979.

6. That the District began the In-Plant Duplicating Service operation as part of its vocational education program in 1974; that the Duplicating Service was managed by a person filling a position entitled "teacher/foreman" and said position has been included in the unit since the unit was established by voluntary recognition in 1976; that Kenneth J. Ondrus commenced his employment with the District in August of 1977 as an Industrial Arts teacher, at which time he took over the management of the In-Plant Duplicating Service in the aforementioned position; that during the 1977-78 school year the volume of printing done by the Duplicating Service increased dramatically such that the District, in response to a protest by Ondrus regarding his salary schedule placement, determined to reformulate the responsibilities of the individual managing the Duplicating Service; that the reformulation of the position resulted in the creation of a new position, entitled Supervisor of In-Plant; and that after creating the new position, the District advertised the vacancy, accepted applications and conducted interviews, and that Ondrus subsequently applied for the position and was hired as Supervisor of In-Plant for the Duplicating Service.

7. That Ondrus, as the Supervisor of In-Plant for the Duplicating Service, is responsible for the day-to-day direction and management of In-Plant Duplicating Services; that this entails direct supervision of two District employees, the Graphic Arts Technician and the Secretary of the Duplicating Service, as well as various work-study students; that in regard to the two aforementioned employees, Ondrus assists in the recruitment, assignment, evaluation, supervision and dismissal of said employees; that he actively participates in the hiring process; that in this respect, although the District does not accept all of his recommendations, he effectively recommended that the District hire Gayle Jacobsen as a technician of the plant at the beginning of the 1978-79 school year; that Ondrus also exercised authority in disciplining and ultimately terminating a former technician; that he schedules and determines work assignments for said employees; that Ondrus has the authority, and has utilized same, to approve or disapprove absences or leaves for illness, vacation or doctor's

appointments and payment for overtime; that Ondrus evaluates the quality and quantity of work performed by the Secretary and the Graphic Arts Technician on a regular basis; that Ondrus also developed the job description for the technician position; and, that, in addition, Ondrus supervises the work-study students (who work for pay but who receive no grade or educational credit) in the same general manner as he does the two regular District employees noted above; that in this regard Ondrus determines the number of said work-study students hired, interviews them as part of the hiring process, disciplines them and assigns them work.

8. That the Supervisor of In-Plant Duplicating is also responsible for the fiscal management of the Duplicating Service; that in said capacity Ondrus is responsible for the financial accounting of the revenues generated by the Plant; that during the 1978-79 school year these funds amounted to approximately \$20,000.00; that such funds are generated in-house and kept in a separate account which, although the District exercises substantial control over, Ondrus oversees; that Ondrus also prepares the yearly budget for the Plant and presents same to the District Finance Committee for its approval; that the budget which is ultimately approved by the School Board: that said budget is in the \$20,000 range and contains money from both the District's general fund and revenue generated in-house; that Ondrus determines what machinery and supplies are needed, elicits bids and makes the purchases; and that although another administrator co-signs the checks for the payment of bills, the District relies on Ondrus' discretion regarding same.

9. That although Ondrus has contact with students throughout the day he is assigned to teach only one hundred minutes a day in the Capstone Program during the school year; that Ondrus spends several hours a day on miscellaneous administrative duties, including the acquisition of supplies and equipment, the processing of orders and assigning tasks to the Plant's employees and students; that Ondrus is not assigned to teach any courses and does not engage in instruction during the summer months and therefore, for two months his time and responsibilities are devoted primarily to managing the Plant, and supervising the employees and students; and that Ondrus spends a substantial part of his time for the District performing supervisory and/or managerial functions.

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

CONCLUSION OF LAW

That the position of Supervisor of In-Plant Duplicating combines duties and responsibilities of a supervisory and managerial nature to an extent sufficient to make the incumbent in said position not a "municipal employee" 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

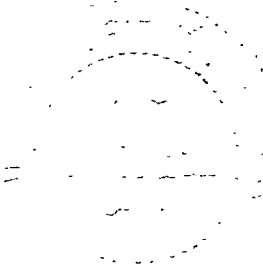
ORDER CLARIFYING BARGAINING UNIT

The position of Supervisor of In-Plant Duplicating be, and the same hereby is, excluded from the bargaining unit involved herein.

Given under our hands and seal at the
City of Madison, Wisconsin this 14th
day of April, 1980

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney

Morris Slavney, Chairman

Gary L. Covelli

Gary L. Covelli, Commissioner

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

As noted in the Findings of Fact, the only position remaining in dispute is that of the Supervisor of In-Plant Duplicating currently held by Ondrus. 1/ The District contends that the position of Supervisor of In-Plant Duplicating is an administrative position with extensive supervisory and managerial responsibilities and as such, the position cannot be included in the teachers' collective bargaining unit. The Association argues that the incumbent in said position is a professional sharing a substantial community of interest with unit employees in that he teaches and performs other duties in support of the educational function.

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

The Commission has determined that managerial status is related to an employee's participation in the formulation, determination and implementation of management policy, as well as said employee's effective authority to commit the Employer's resources. 2/

Ondrus is responsible for the fiscal management of the Duplicating Service which includes expenditure of both School District general funds and monies generated in-house. Ondrus also prepares a yearly budget for the Plant and submits it for School District approval. Finally, Ondrus has the effective authority to commit a portion of the District's resources with respect to the operation of the Duplicating Service. 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. By comparison, the authority to make expen-

1/ The School District filed a Motion to Dismiss as noted in Finding of Fact Number 4. Assuming arguendo that the School District still wishes a determination regarding same (the School District did not raise the issue at the hearing or argue it in the briefs), the Commission denies said motion. In this regard the Commission reiterates its policy to entertain petitions to clarify a voluntarily recognized unit where, as here, the position at issue was created after voluntary recognition and where such recognition clause "does not expressly exclude such position." Tomahawk Public Schools (12483-B) 8/77. In so much as there is a dispute between the parties over whether a new position has been created herein, the Commission points out that it is also its policy to clarify a voluntarily recognized bargaining unit where to leave a position in said unit contravenes the provisions of MERA. County of Waukesha (14830) 8/76.

2/ City of Wausau (14807) 7/76.

ditures 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. For example, a secretary empowered to purchase postage on an as-needed basis would not have the power to commit the employer's resources within the meaning of this criterion for determining managerial status. 3/

Thus, Ondrus exercises some authority that is managerial in nature which, when combined with the supervisory authority noted in the Findings sufficiently aligns him with management to characterize him as managerial, despite the fact that he has some teaching and other related responsibilities. In this regard the Commission rejects the argument of the ULE that it must look separately at whether Ondrus is a supervisor or a manager, in order to determine if his interests are more aligned with management than with the bargaining unit. 4/

The ULE also maintains that any supervisory duties exercised by Ondrus are de minimus and insufficient to exclude him from the bargaining unit. However, the record does not support such a conclusion. To the contrary Ondrus, as noted in the Findings, possesses sufficient supervisory duties which, when combined with his managerial responsibilities, serve to exclude him from the bargaining unit. We reject the position of ULE to the effect that there is some threshold percentage of one's time which must be devoted to supervision in order for the Commission to exclude an individual as a supervisor. The Commission has determined that the frequency or infrequency with which an employee exercises supervisory and managerial authority is not, in and of itself, sufficient to finally determine an employee's bargaining unit status. 5/ The Commission also rejects ULE's position that only supervisory authority over employees in the professional unit suffices as a basis for excluding Ondrus from said unit. This position has no foundation

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

4/ Mid-State Vocational, Technical and Adult Education District No. 14 (16094-C) 4/78.

5/ Stanley-Boyd Area Schools, Jt. District No. 4 (11589-A) 7/73
See, for example, Joint School District No. 1, Villages of
Bruce and Exeland et al (11975-A) 11/77, where the Commission
excluded a person from the bargaining unit as a supervisor
who carried a 4/5 teaching load.

in the statutes 6/ or Commission case precedent. 7/ River Falls Jt. School District No. 1 (13804-A) 10/76, cited by the Union to support the above position, can be distinguished from the instant case based on the de minimus amount of supervisory duties performed therein by the Reading Specialist, which led to her inclusion in that bargaining unit.

The ULE further argues that Ondrus performs the same duties now as he did when the position was included in the bargaining unit. Assuming arguendo that this is true, ULE's argument still must fail. As noted previously, the Commission will clarify a position previously included in a voluntarily recognized bargaining unit where to leave it in the unit contravenes the provisions of MERA. 8/

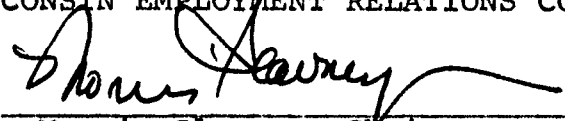
Finally, ULE has emphasized some similarities between the position of Supervisor of In-Plant Duplicating and other vocational education teachers and department chairs who are included in the teachers' bargaining unit. However, the Commission is persuaded that the responsibilities and duties of the Supervisor of In-Plant Duplicating distinguish said position from the aforementioned positions. It is clear in this instance that the incumbent displays sufficient supervisory/managerial authority to exclude said position from the bargaining unit, based upon the amount of his supervisory authority over employees, his authority to commit District funds including the amount of such funds, and the amount of time he devotes to managing the program.

Based on all of the above, the Commission has excluded the aforementioned position from the existing collective bargaining unit.

Dated at Madison Wisconsin this 14th day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Gary L. Covelli, Commissioner

6/ Section 111.70(1)(o) of the Wisconsin Statutes defines supervisory as:

. . . 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 employees . . . (Emphasis Added).

7/ The Commission has, for example, considered supervisory authority over student employees in determining exclusion from a bargaining unit. Mid-State Vocational, Technical and Adult Education District No. 14 supra.

8/ County of Waukesha supra.