

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

MANITOWOC EDUCATION ASSOCIATION :

Involving Certain Employees of :

MANITOWOC PUBLIC SCHOOL DISTRICT :
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Case XXI
No. 25949 ME-1814
Decision No. 18128

Appearances:

Mr. Evan Hughes, Kettle Moraine UniServ Council, 3811 Kohler Memorial Drive, Sheboygan, Wisconsin 53081; Mr. John B. Murphy, 3324 Waldo Blvd., Manitowoc, Wisconsin 54220; Mr. Robert Huston, 512 S. 27th St., Manitowoc, Wisconsin 54220; appearing on behalf of the Association.

Nash, Spindler, Dean & Grimstad, Attorneys at Law, by Mr. John M. Spindler, 926 S. 8th Street, P. O. Box 1128, Manitowoc, Wisconsin 54220, appearing on behalf of the District.

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

The Manitowoc Education Association filed a petition requesting the Wisconsin Employment Relations Commission to clarify a collective bargaining unit consisting of certain employees in the employ of the Manitowoc Public School District. Hearing was held in Manitowoc, Wisconsin, on May 8, 1980 before Hearing Examiner Stuart S. Mukamal. The parties filed briefs, the last of which was received on July 14, 1980. 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, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Manitowoc Education Association, hereinafter referred to as the Association, is an employe organization having its offices at Manitowoc, Wisconsin.

2. Manitowoc Public School District, hereinafter referred to as the District, has its offices at Manitowoc, Wisconsin, where it operates a public school system.

3. For the past number of years the District has recognized the Association as the exclusive collective bargaining representative of certified teachers, librarians and counselors in the employ of the District. In 1979 the District recruited and employed a Reading Specialist, and thereafter the Association initiated the instant proceeding, seeking to include said position in the collective bargaining unit represented by it. Contrary to the Association, the District contends that the present occupant of the position, Diane Lawler, is not an employe within the meaning of the Municipal Employment Relations Act, but rather performs supervisory, confidential and managerial duties and that, therefore, the position cannot be appropriately included in the bargaining unit involved herein.

4. Ms. Lawler was hired by the District in August 1979, following the enactment of Section 118.015, Wis. Stats., which statutory provision required each school district in the State to employ a Reading Specialist

"to develop and coordinate a comprehensive reading curriculum" in K-12 school districts. The vast majority of Ms. Lawler's duties directly relate to the functions set forth in the statutory provision. The District has not created a reading department nor does it employ reading teachers. Ms. Lawler's authority extends mainly to the areas of program development and curriculum implementation and modification. She possesses the responsibility for developing the District's reading program and the instructional methods to be used in the teaching of reading in the District, for drawing up and presenting the reading curriculum and for ordering necessary materials and supplies. She possesses substantial discretion in these areas, although major decisions, such as substantial curriculum revisions, would require the approval of the District's Director of Curriculum and/or the Board of Education. However, these duties are programmatic in nature and do not involve a personnel function except in an incidental sense. Ms. Lawler does exercise some limited personnel functions, but these functions are related to her program-related duties and do not constitute a substantial grant of supervisory authority over teachers.

5. Ms. Lawler also possesses considerable authority over budget for reading materials and supplies, and she is able to commit District funds for the purchases of such material and supplies.

6. Ms. Lawler has on one occasion interviewed candidates for possible appointments as teachers. She has also observed the performance of teachers and made suggestions to them as to possible improvements in instructional techniques, particularly insofar as the teaching of reading is concerned. However, she has not made any written evaluations of the general, overall performance of teachers, nor does she appear to be likely to become involved in the ongoing process of periodically evaluating teacher performance. If Lawler observes an inadequate performance by a teacher, she can call such performance to the attention of the District's multiple evaluation team for further evaluation and the consequences thereof. The collective bargaining agreement does not set forth any identifiable role of the Reading Specialist in the grievance procedure. Ms. Lawler's office is situated at the District's central headquarters although much of her time is spent in the various schools operated by the District. She teaches no classes, although she is certified as a Reading Specialist K-12. She serves as a member of the District's Administrative Council, which is comprised of all administrative employees, principals, assistant principals and department heads. There was no evidence introduced to indicate that the Reading Specialist performs any duties relating to, or having privy of, matters relating to collective bargaining and administration of the collective bargaining agreement.

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

CONCLUSIONS OF LAW

1. That the position of Reading Specialist in the employ of the Manitowoc Public School District is neither a supervisory position within the meaning of Section 111.70(1)(c) of the Municipal Employment Relations Act, nor a confidential position within the meaning of said Act.

2. That the position of Reading Specialist in the employ of the Manitowoc Public School District is a managerial position within the meaning of the Municipal Employment Relations Act and, therefore, the occupant of said position is not a municipal employe within the meaning of Section 111.70(1)(b) 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 CLARIFYING BARGAINING UNIT

The Reading Specialist in the employ of the Manitowoc Public School District be, and the same hereby is, excluded from the collective bargaining unit consisting of certified teachers, librarians and counselors in the employ of the Manitowoc Public School District.

Given under our hands and seal at the
City of Madison, Wisconsin, this 7th
day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner

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

This matter involves the status of Diane Lawler, the incumbent of the position of Reading Specialist, whom the Association alleges should be included in the collective bargaining unit consisting of teachers, librarians and counselors. The District would exclude the position from the unit.

In a somewhat similar situation involving a petition by the Association to include certain department heads and assistant principals within the aforementioned collective bargaining unit, the Commission concluded that those positions should not be included within the unit on the grounds that they performed supervisory and confidential functions.^{1/} The Commission based its conclusion upon its findings that the incumbents of those positions possessed the effective power to hire, evaluate, assign, transfer, discipline and discharge teachers and to handle and resolve grievances, and that they were privy to the District's positions in collective bargaining, even to the point of serving on the District's negotiating team. The Commission rejected the Association's argument that the joint decision-making process employed by the District (which necessarily involved a number of other parties in major decisions) diluted the authority of the department heads and assistant principals to such a degree that their exclusion from the bargaining unit was unwarranted. While in some respects, the reasoning employed in that decision is applicable to the situation at hand, we believe that significant differences exist between the nature of the positions involved in that proceeding and the nature of Ms. Lawler's position.

The District regards Ms. Lawler as an administrative employee and is paid according to the District's Administrative Salary Schedule, although in 1979-1980 she received a somewhat lower pay rate than other administrators. She receives the same fringe benefits as the District's other administrators and has been given substantial freedom to structure her workday as she sees fit.

Ms. Lawler's testimony during the hearing indicated that her perception of her position was that it contained a significant degree of supervisory authority over teachers. Thus, she testified that she has the authority to recommend renewal of teacher contracts, to discipline teachers, to adjust grievances, to recommend suspensions of teachers, to place letters of reprimand in teachers' files, to recruit and make recommendations concerning hiring of new teachers, to schedule classes in conjunction with school principals, to direct teachers to restructure their working days, to transfer teachers, to generally evaluate teaching performance, and to supervise the performance of teachers who teach reading. She stated that her authority to supervise and direct the work of teachers at the elementary level was considerable--in some respects apparently exceeding that of elementary school principals--given that a large portion of the work day at that level was devoted to reading-related teaching. However, a review of the record indicates that Ms. Lawler's supervisory authority is not as extensive as she may have supposed.

^{1/} Manitowoc Public School District (17200) 8/79.

On the contrary, the record establishes that Ms. Lawler's authority to impose discipline against teachers is quite limited. She can, upon observance of inadequate performance, suggest improvements, and she can, if appropriate, invoke the disciplinary process by calling in the District's multiple evaluation team to evaluate and deal with instances of more serious infractions. She apparently cannot impose any substantial form of discipline on her own. Although it is possible that, in the future, her recommendations as to discipline, suspension or discharge of teachers may carry some persuasive weight, there is no evidence that such has been or will be the case. Finally, in contrast to the department heads, who are specifically denoted as the District's representatives on Level I of the grievance procedure contained in the 1980 collective bargaining agreement, the Reading Specialist is not mentioned at any stage of the grievance procedure and it must be assumed that Ms. Lawler will play no part in that process. At this time, it must, therefore, be concluded that Ms. Lawler's role in the process of hiring, evaluation, discipline, suspension, non-renewal and discharge of teachers is rather peripheral and is generally confined to those aspects of the process as it may impinge upon the District's reading program.

The intent of Section 118.015, Wis. Stats., and of the applicable implementing regulations as promulgated by the State Department of Public Instruction under the title of "Wisconsin Criteria for Quality K-12 Developmental Reading Programs", is to ensure that a qualified professionally trained reading program administrator would be available in each district to coordinate and oversee the district's reading curriculum. The record indicates that the vast majority of Ms. Lawler's duties directly relate to precisely this function, and not to supervision.

Based on the foregoing, we conclude that Ms. Lawler does not possess the commonly recognized requisite indicia of supervisory authority in sufficient combination and degree to warrant the conclusion that her position is supervisory within the meaning of Section 111.70(1)(o) of the Municipal Employment Relations Act.^{2/} At the present time, she does not possess the general authority to recommend effectively the hiring, promotion, transfer, discipline or discharge of employees. She possesses a very limited degree of authority to direct and assign employees. Her supervisory authority is primarily directed toward supervision of an activity--the District's reading program--and not toward supervision of employees. Her authority to supervise employees is strictly circumscribed, and her discretion in this regard is quite limited. Finally, she is paid primarily for her professional skills as a Reading Specialist and not for performance of supervisory duties. We are fully aware that the position of Reading Specialist is newly created and that the duties of that position may not as yet be firmly fixed, but it does not appear that this position is or will become a supervisory position within the meaning of the Municipal Employment Relations Act.

Similarly, there does not appear to be sufficient evidence to support a conclusion that Ms. Lawler's position is "confidential" within the meaning of the Municipal Employment Relations Act.^{3/} While Ms. Lawler is a member of the District's Administrative Council and as such may be informed from time to time on the District's positions and strategy in collective bargaining, she has not as yet provided input into the collective bargaining process. Although the possibility may

2/ See Eau Claire County (Health Center & Mount Washington Home), (17488) 12/79; Milwaukee Area Board of Vocational, Technical and Adult Education District No. 9, (8736-B, 16507-A) 6/79; Village of Butler (Police Department), (16844) 2/79.

3/ See City of Oak Creek (Fire Department), (17633) 3/80; Milwaukee Area Board of Vocational, Technical and Adult Education, supra, n. 2; Crawford County, (16931) 3/79.

exist that she may be called upon to serve on the District's negotiation team on a rotating basis, she has not yet done so, nor is there any indication that she will do so at any particular point in the future. Her position does not involve any other form of ongoing participation in confidential matters involving labor relations within the District. Therefore, we conclude that the evidence relating to Ms. Lawler's "confidential" functions is too speculative to support a finding that she should be excluded from the appropriate bargaining unit on that basis.

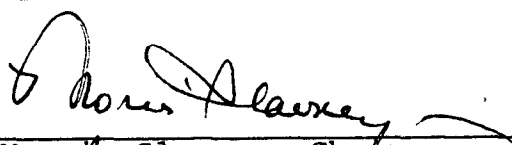
We have, however, concluded that Ms. Lawler's position is "managerial" within the meaning of the Municipal Employment Relations Act.^{4/} Ms. Lawler possesses considerable discretionary authority over the administration of the District's reading program, and authority which clearly extends to its general management and its day-to-day operation. It is true that, on certain very major decisions relating to the reading program, she acts in a consultative role with other District administrators and with the Board of Education. However, even on those major decisions (for example, a contemplated major shift in methods of reading instruction or major revisions in the reading curriculum), she can be expected, as an expert in the field, to exert a strong influence on decision making. There can be no doubt that the District's reading program constitutes an important element of its education policy-making function, particularly in the lower grades, where a good share of instructional time is necessarily spent on reading-related education. The clear intent of Section 118.015, Wis. Stats., of the implementing regulations issued by the Department of Public Instruction, and of Ms. Lawler's position description is to vest the Reading Specialist with considerable managerial authority as to educational policy.

Ms. Lawler also possesses considerable authority over a budget for reading materials and supplies akin to that possessed by academic department heads, and to an extent that she is able to commit District funds for the purchase of such supplies largely at her discretion.


On the basis of the above, we have concluded that the Reading Specialist should be excluded from the bargaining unit consisting of teachers and librarians employed by the District on the basis that it is clearly a "managerial" position within the meaning of the Municipal Employment Relations Act.

Dated at Madison, Wisconsin, this 7th day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

^{4/} See Milwaukee Area Board of Vocational, Technical and Adult Education, supra n. 2; School District of Tomahawk (16524) 8/78; Winter Joint School District No. 1, (16467) 7/78.