

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

MORaine PARK FEDERATION OF TEACHERS, :
LOCAL 3338, WFT, AFT, AFL-CIO :

Involving Certain Employees of :

MORaine PARK VOCATIONAL, TECHNICAL :
AND ADULT EDUCATION DISTRICT :

Case XII
No. 27621 ME-1976
Decision No. 18893

Appearances:

Mr. Steve Kowalsky, Representative, Wisconsin Federation of Teachers,
6525 West Bluemound Road, Milwaukee, Wisconsin 53213, appearing
on behalf of the Union.

Foley & Lardner, by Mr. F. Roberts Hanning, Jr., First Wisconsin
Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202,
appearing on behalf of the District.

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

Moraine Park Federation of Teachers, Local 3338, WFT, AFT, AFL-CIO having on March 6, 1981 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all unrepresented non-professional employees in the employ of Moraine Park Vocational, Technical and Adult Education District, to determine whether said employees desired to accrete to the bargaining unit of professional employees in the employ of said District, and which unit is presently represented by the Union; and hearing in the matter having been conducted at Fond du Lac, Wisconsin, on April 29, 1981, before Dennis P. McGilligan, Hearing Officer; and at the outset of the hearing the parties having submitted a "Memorandum of Understanding", wherein they agreed as to the placement or non-placement in the bargaining unit involved of all but one position, namely that of Manager of Student Activities; and the parties having filed briefs by July 31, 1981; and the Commission, having considered the evidence and briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Moraine Park Federation of Teachers, Local 3338, WFT, AFT, AFL-CIO, hereinafter referred to as the Federation, is a labor organization and has its offices at 6525 West Bluemound Road, Milwaukee, Wisconsin.

2. That Moraine Park Vocational, Technical and Adult Education District, hereinafter referred to as the District, is a municipal employer and has its offices at 235 North National Avenue, Fond du Lac, Wisconsin.

3. That the Federation and the District were parties to a collective bargaining agreement, existing from July 1, 1979 to at least June 30, 1981, covering the wages, hours and working conditions of employees of the District in a collective bargaining unit described in said agreement as follows:

. . . all regular full-time teaching personnel, including guidance counselors, but excluding substitutes and part-time teachers, teacher aides, office and clerical employees, maintenance and operating employees, the district director, assistant directors, administrators, adult education supervisors, coordinators, head librarians, department chairpersons, administrative specialists, and all other supervisory employees.

4. That in the instant proceeding the Federation seeks to include additional professional positions, which have been excluded from the aforesaid bargaining unit, by an election among said unrepresented professionals; that at the outset of the hearing the parties submitted a "Memorandum of Understanding", executed by their representatives, wherein they agreed as to the disposition of all issues, except as to the position of Manager of Student Activities; and that the disposition of the remaining positions were agreed upon as follows: 1/

In the Unit

| | |
|-----------------|---|
| Judith Neill | - Regular contract full-time instructor |
| Stan Arpke | - Career Development Counselor |
| Greg Langille | - Career Development Counselor |
| Mary Cody | - Instructor teaching more than 50% of full work load |
| Doris Dahlke | - Instructor teaching more than 50% of full work load |
| Marilyn Muraski | - Instructor teaching more than 50% of full work load |
| Rosemary Sasing | - School Health Nurse |

Nancy Valind, Barbara Doan, Johanna O'Brien, Janet Rose, and Shirley Pohlman not in unit so long as they are employed as substitute instructors or part-time instructors teaching less than 50% of a full work load schedule, as applicable.

5. That as a result of such "Memorandum of Understanding" the parties agreed that the recognition provision to be included in the successor collective bargaining agreement will describe the bargaining unit as follows:

The District recognizes the Federation as the exclusive bargaining representative on questions of wages, hours and conditions of employment for all regular contract teaching personnel who work at least fifty percent (50%) of a full work load schedule in their area, including student guidance counselors and school health nurses, but excluding the District Director, Assistant District Directors, department chairpersons, head librarians, supervisory personnel, coordinators, executive and managerial personnel, confidential employees, call staff instructors, substitute and part-time (i.e., less than fifty percent of a full work load schedule in their area) teaching personnel, secretarial, clerical, custodial and other support staff personnel.

6. That the parties agreed that should the Commission conclude that the position of Manager of Student Activities, the only position remaining in issue, be eligible for inclusion in the unit represented by the Federation, then said position should be accreted to the unit without the necessity of an election involving the occupant of said position; and that, however, contrary to the Federation, the District contends that the position should not be included in the unit since the occupant thereof not only possesses supervisory and managerial responsibilities, but, further, that the occupant thereof lacks a community of interest with the remaining professionals in the unit.

7. That Glen Sanville occupies the position of Manager of Student Activities, a position responsible for all student activity programs of the District; that Sanville is employed in the Development and Support Services unit of the District and he reports directly to the Administrator of Student Services, who in turn reports to the

1/ Three additional positions originally in issue and previously occupied by Lee A. Ader, Madeline Mleczech, and Richard Majcher, were no longer in issue at the time of the hearing since said individuals were no longer employed.

Assistant Director of said unit; that the majority of employees who are presently included in the bargaining unit involved are employed in the Instructional Operations unit of the District; and that Sanville's wages, hours and working conditions differ from those established for bargaining unit personnel, and are generally the same as those existing for administrative personnel in the employ of the District.

8. That Sanville effectively recommended the hiring of a CETA employe, who works 25 hours per week in the game room, and Sanville also effectively recommended pay increases for said employe, who is assigned work by Sanville, and who performs his duties under the direction and supervision of Sanville; that Sanville has also effectively recommended the hiring of several work/study students and has assigned them duties in the game room; that Sanville has recruited bargaining unit employes to serve as student club advisors, who receive additional compensation for such duties; and that although Sanville possesses the authority to remove such advisors, he has never exercised such authority.

9. That Sanville has budgetary responsibility with respect to two different budgets, an operational budget funded from the general school budget and a student activities budget which is funded by student fees totalling between \$25,000 and \$30,000 per year; that with respect to the operational budget, Sanville has the responsibility for purchase of supplies and equipment and with respect to the student activities budget, he is the sole District employe assisting the students in the preparation of said budget; that Sanville is required, either to co-sign an expenditure request from this budget, or to monitor the expenditures of the student clubs from their allocated portions of this budget, that he must see that the District's fiscal policies are followed by all clubs; that Sanville is empowered to enter into certain contracts on the District's behalf, and that he has approval authority over any fund raising activities by the students; and that Sanville arranges and supervises whatever security is needed at student functions.

10. That the duties and responsibilities of Glen Sanville, as Manager of Student Activities, occupy a substantial portion of Sanville's working time.

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

CONCLUSION OF LAW

That the position of Manager of Student Activities combines duties and responsibilities of a supervisory and managerial nature to an extent sufficient to make the incumbent in said position not a "municipal employe" 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

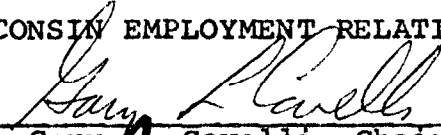
ORDER

The position of Manager of Student Activities 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 25th day of August, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary J. Covelli, Chairman


Morris Slawney, Commissioner


Herman Torosian, Commissioner

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 Manager of Student Activities currently held by Glen Sanville. The District contends that the position of Manager of Student Activities is an administrative position with extensive supervisory and managerial responsibilities and as such, the position cannot be included in the aforesaid collective bargaining unit. The Union argues that the incumbent in said position shares a community of interest with unit employees in that he performs 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/

The Commission has previously held:

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 expenditures 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, the Manager of Student Activities exercises some authority which 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 his program relates to students. In this regard the Commission rejects the argument of the Union that the position does not possess sufficient supervisory and managerial authority to exclude him from the bargaining unit.

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

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

While the Union also argues that the Manager of Student Activities shares a community of interest with unit members in that he performs duties in support of the educational function, his duties involve such managerial and supervisory responsibilities so as to exclude him from qualifying as a "municipal employee".

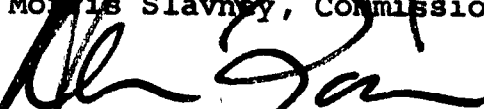
Based on all of the above, the Commission has excluded the aforementioned position from the existing collective bargaining unit.

Dated at Madison, Wisconsin this 25th day of August, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner