

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of | : | |
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| ONDOSSAGON EDUCATION ASSOCIATION | : | |
| | : | |
| Involving Certain Employes of | : | Case X |
| | : | No. 28952 ME-2073 |
| | : | Decision No. 19667 |
| SCHOOL DISTRICT OF THE TOWNS OF BARKSDALE, DELTA, EILEEN, KELLY, KEYSTONE, MASON, PILSEN, WASHBURN, and the Village of Mason (ONDOSSAGON) | : | |
| | : | |

Appearances:

Mr. Barry Delaney, Executive Director, Chequamegon United Teachers, Route 1, Box 111, Hayward, Wisconsin, 54843, on behalf of the Petitioner

Mr. Michael J. Wallschlaeger, Superintendent, School District of the Towns of Barksdale, Delta, Eileen, Kelly, Keystone, Mason, Pilsen, Washburn and the Village of Mason (Ondossagon), Route 3, Ashland, Wisconsin, 54806, on behalf of the District.

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

Ondossagon Education Association having on, December 9, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit consisting of all teachers in the employ of the District, by determining whether the School Psychologist should be included or excluded from the said unit; and hearing in the matter having been held on February 2, 1982 in Ashland, Wisconsin before Examiner Mary Jo Schiavoni; and briefs having been received from the parties on March 29, 1982; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Ondossagon Education Association, herein the Association, is a labor organization representing municipal employes for purposes of collective bargaining; and, that it has its offices at Route 1, Hayward, Wisconsin.
2. That the School District of the Towns of Barksdale, Delta, Eileen, Kelly, Keystone, Mason, Pilsen, Washburn and the Village of Mason (Ondossagon), herein the District, is a municipal employer which operates a school system in Ondossagon, Wisconsin, and has its principal offices at Route 3, Ashland, Wisconsin.
3. That the District has, for a number of years, voluntarily recognized the Association as the collective bargaining representative of employes in a bargaining unit described in the parties 1980-1981 collective bargaining agreement as all classroom teachers, librarians, guidance counselors and teaching principals certified by the Wisconsin Department of Public Instruction.
4. That in the instant proceeding the Association requests the Wisconsin Employment Relations Commission to determine that the position of school psychologist, currently occupied by Paul Van Dyke, is to be included in the above described bargaining unit; and that the District contrary to the Association, contends that Van Dyke is a managerial/supervisory employe and should therefore be excluded from the bargaining unit.
5. That the position of school psychologist is a sixty (60%) percent position; that Van Dyke, a licensed school psychologist spends the remaining forty (40%) percent of his time as an employe of a neighboring school district; that Van Dyke is responsible for the psychological and psychoeducational assessment of the

District's students, usually accomplished through testing of the students and consultation with parents, teachers and other specialists; that he co-ordinates the M-team, a multidisciplinary group of teachers, principals, specialists, and possibly parents who concern themselves with the appropriate educational approach for a student with special needs, identifying problems that students may be experiencing, and developing programs to correct such problems; that he has substantial input into the individual educational programs mandated by state law and into the development of processes and procedures to be utilized in the special education program which he then communicates to the staff; that he arranges placements for students outside of the district; that he fills out State-mandated enrollment reports and annual plans, and contacts other specialists for additional evaluations as needed by students in the special education program; that Van Dyke does not have the effective authority to hire, suspend, layoff, recall, promote, discharge, reward or discipline employees, nor does he have the effective authority to adjust grievances; that Van Dyke does not exercise supervisory responsibilities in sufficient combination or degree so as to make him a supervisory employee; that the District's management policy is to have an individual educational program for students with special educational need; that Van Dyke's is responsible for the development and implementation of said programs; that Van Dyke's primary function however is to work with students on a one to one basis as do other professional employees of the District; that Van Dyke does not possess the authority to commit the District's resources to implement its policies and programs; that Van Dyke does not participate to a significant degree in the formulation and implementation of management policy as it relates to the District's Special Education program so as to constitute him a managerial employee.

6. That the position of school psychologist has a substantial community of interest with other professional employees of the District included in the collective bargaining unit represented by the Association.

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

CONCLUSION OF LAW

1. That, since the position of school psychologist is neither supervisory nor managerial in nature, the occupant of said position is 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 Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

That the position of school psychologist is included in the professional collective bargaining unit represented by the Association.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

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

The District, at the hearing, argued that the School Psychologist position currently occupied by Paul Van Dyke was both supervisory and managerial in nature. In its brief, however, the District relies primarily upon the contention that the position is managerial. It argues that the School Psychologist is vitally involved in the policy making process of the District's special education programs and primarily responsible for the implementation of the District's program through the co-ordination of the M-team in that he is directly responsible for the formulation, implementation, and monitoring of Individual Educational Programs (I.E.P.'s) to meet the needs of special education students.

The Association contends that the School Psychologist is neither supervisory nor managerial. It relies upon the fact that the previous school psychologist who performed the job of a learning disability teacher sixty (60%) per cent of the time and the school psychologist forty (40%) per cent of the time was included voluntarily in the bargaining unit by the parties in previous years. The Association argues that Van Dyke possesses none of the indicia of supervisory status. It also maintains that he is not a managerial employe because he does not possess either the ability to formulate, determine, and carry out management policies or the authority to commit the District's resources.

The evidence adduced at hearing indicates that the District regards Van Dyke as an administrative employe, and is paid in accordance with the District's administrative salary schedule. He also participates in meetings of the District's Administrative Council along with the District's other administrators.

Although the District contended that Van Dyke possessed significant supervisory authority over the special education teachers, a thorough review of the record indicates that Van Dyke, at least to date, does not possess any of the indicia of supervisory status. There is no evidence that his recommendations as to discipline, suspension or discharge carry any weight, nor is there an indication that Van Dyke has participated in either the hiring or the grievance procedures as a representative of the District. 1/ Although it is possible that, in the future, Van Dyke's recommendations as to discipline, suspension or discharge of teachers may carry some weight, at this time there is insufficient basis to conclude that the school psychologist is or will become a supervisory position within the meaning of Section 111.70(1)(o) of the Municipal Employment Relations Act.

Upon careful review of the evidence of record and the arguments of the parties, we conclude that Van Dyke's position is not a "managerial" employe. We have consistently held that in order for an employe to constitute a managerial employe, said employe must participate in the formulation, determination, and implementation of policy to a significant degree or must have the effective authority to commit the municipal employer's resources. 2/ There is no evidence that Van Dyke possesses any authority to commit the employer's resources. He is not involved in the funding of, nor, in ordering supplies for, the Special Education Program. Rather, it is Van Dyke's supervisor, the Director of Special Education who is involved in these functions. While it is true that Van Dyke possesses some discretionary authority with regard to the administration and development of Individual Education Plans for special education students, this authority is that consistent with that authority given to other professional employes who work with children and stems largely from his analytical function of evaluating problem students as a school psychologist. Similarly, while Van Dyke may enjoy an administrative salary and participate in the District's Administrative Council, there is insufficient evidence to demonstrate that he

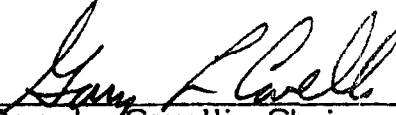
1/ Compare: Kewaskum School District (15407) 4/77.

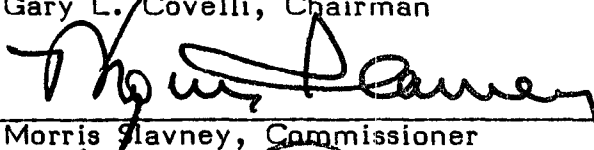
2/ Green County (16270) 3/78; City of Wausau (14807) 7/76; Door County (14810) 7/76; Madison Metropolitan School District, (14814) 8/78.


participates in the formulation, determination and implementation of policy "to a significant degree." 3/ Rather it appears that his major functions despite the District's contention that the duties of the position have been substantially changed, involve identifying students with special needs, developing approaches as a member of a multidisciplinary team consisting of other professional employes of the District, and monitoring the progress of these special education students. He shares office space with the guidance counselor, a bargaining unit employe, and associates with the other professional bargaining unit employes. Any responsibility that he may possess for formulating or implementing a management policy is incidental to his primary function of working directly with special education students and other professionals to accomplish the District mission and does not differ significantly from the responsibility of any other professional employe. 4/ Accordingly, it is concluded that the School Psychologist shares a community of interest with the district's other professional employes and does not possess either the effective authority to commit the municipal employer's resources or the responsibility for formulating, developing and implementing management policy to such a degree or in such a manner to be sufficient to warrant his exclusion as a managerial employe within the meaning of the Municipal Employment Relations Act. 5/

Dated at Madison, Wisconsin this 17th day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

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

4/ See New Auburn Jt. School District No. 11 (13068) 10/74.

5/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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.

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5/ (continued from page four)

Unless a rehearing is requested under s. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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.