

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case X
No. 29816 ME-2113
Decision No. 20022

Mr. Barry Delaney, Executive Director, Chequamegon United Teachers, Route 1, Box 1153, Hayward, Wisconsin 54843, appearing on behalf of Chequamegon United Teachers.

Mr. William Matthias, District Administrator, Northwood School District, Box 8, Minong, Wisconsin 54859, appearing on behalf of Northwood School District.

Chequamegon United Teachers having, on May 28, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the Northwood School District to determine whether said employees desired to be represented by said organization for purposes of collective bargaining; and hearing in the matter having been conducted on June 17, 1982 at Minong, Wisconsin, by Examiner Duane McCrary, a member of the Commission's staff; and prior to any action by the Commission, and on July 19, 1982, Wisconsin Council 40, AFSCME, AFL-CIO, by letter having requested that it be placed on the ballot in the matter; and the Commission, by letter dated July 20, 1982, having advised the latter organization that it should file a formal motion, and an affidavit in support thereof; and the latter organization having failed to file such a motion and or affidavit; and the Commission having considered the record, and being fully advised in the premises, makes and issues the following

1. That Chequamegon United Teachers, hereinafter referred to as CUT, is an organization representing employes for the purposes of collective bargaining, and has its offices at Route 1, Box 1153, Hayward, Wisconsin 54843.

2. That Northwood School District, hereinafter referred to as the District, is a municipal employer, which maintains and operates a school system for the benefit and education of the inhabitants of the District, and which maintains its offices at Minong, Wisconsin 54859.

3. That, for the past number of years and at least to March 17, 1982, all regular full-time and regular part-time professional employees in the employ of the District were represented for the purposes of collective bargaining by Northwood Federation of Teachers, Local 3471, WFT, AFT, AFL-CIO; that following an election conducted by the Wisconsin Employment Relations Commission on March 4, 1982 the employees in said professional collective bargaining unit selected CUT as their exclusive collective bargaining representative, and that the Commission issued its certification reflecting same on March 17, 1982.

4. That in its petition initiating the instant proceeding CUT requests the Wisconsin Employment Relations Commission to conduct an election among all non-certified employees in the employ of the District, excluding managerial, supervisory and confidential employees to determine whether said employees desire to be represented by CUT for the purpose of collective bargaining; and that the positions sought to be represented by CUT include the following full-time and part-time positions:

Secretarial Staff

Accountant
Gordon School Secretary
Admin. Secretary-Minong
Bookkeeper-Secretary

Custodial Staff

Head Custodian
Custodians

Aides

Library Aide
Title I Aide
Special Education Aide
Gordon Aide

Food Service

Head Cook
Cooks
Helpers

5. That, during the course of the hearing, the District and CUT agreed that the description of the appropriate collective bargaining unit should be "all regular full-time and regular part-time non-certified employees of the District, excluding managerial, supervisory and confidential employees"; and that, however, during the course of the hearing, the District, contrary to CUT, contended that individuals occupying the positions of Accountant, Administrative Secretary, Head Custodian, and Head Cook should be excluded from the unit involved herein, on the basis of the claims that the Accountant is a managerial, supervisory and confidential employee, that the Administrative Secretary is a confidential and supervisory employee, and that both the Head Custodian and Head Cook are supervisory employees.

6. That the School Accountant, at the time of the hearing Audrey Blaylock, maintains the District's financial records and is responsible for preparing payrolls, issuing of pay checks, and maintaining records of employee participation in benefit programs; that Blaylock's participation in the negotiations between the District and the bargaining representative of the professional staff has included participation in the formulation of the District's economic proposals and the typing of same, some of which were not presented to said bargaining representative; that Blaylock has also formulated and recommended changes relating to pay dates, intra-District purchasing, and accounting procedures, the utilization of time clocks for supportive personnel, and the institution of a pre-paid lunch program for students; participated in the development of a proposal relating to an employee health insurance program, resulting in a saving of approximately \$7000 to the District; participated in the preparation of the District's budget, involving past as well as anticipated expenditures, and participated in the deliberation and determination relating to tax levies; and that as demonstrated by the above responsibilities and activities, the School Accountant has confidential access to and knowledge of the District's strategy in collective bargaining, and also participates, to a significant degree, in the formulation, determination and implementation of policy decisions made by the District.

7. That the position of Administrative Secretary is occupied by Violet Peterson; that although Peterson has typed some District proposals and memos concerning teacher negotiations she neither has confidential knowledge of, nor participates in the development of the District's positions in bargaining, contract administration or litigation; that Peterson has typed employee reprimands and teacher evaluations, which are available to the employees and teachers involved; that although Peterson recommended the hiring of a CETA employee who worked in her office, both after school hours during the 1981-1982 school year, and during the day for the summer of 1982, Peterson does not hire, fire, promote, transfer, discipline or discharge employees of the District, nor does she have the authority to recommend same; that Peterson directed the activities of the CETA employee, in addition to the activities of four (4) work study students working in her office for no compensation; that Peterson does not select the work study students working in her office; that Peterson does not have access to confidential matters relating to labor relations and/or collective bargaining.

8. That the Head Custodian position, occupied by Stanley Gawlinski, is responsible for directing and supervising the work activities of the custodial staff of the District, presently consisting of four full-time employees and two part-time employees, as well as summer seasonal employees hired through CETA; that he spends from twenty to thirty percent of his time performing custodial duties, and the remainder of his time is spent in directing the work force, performing carpentry work and necessary maintenance on the furnace, boilers, and electrical systems, securing the District's three school buildings, i.e. high school, Gordon

Elementary, and kindergarten, and, ordering necessary supplies, that Gawlinski has, after consultation with the District Administrator, rescheduled the employees; that, while Gawlinski has not recommended the hire of a specific employee, he has recommended to the District Administrator the need to employ an additional employee; that the Head Custodian does not transfer employees, approve time off or vacation requests, or, authorize overtime; that the Head Custodian will, on occasion, instruct the senior night custodian, regarding changes in the work schedule or specific projects; that Gawlinski has effectively recommended the discipline and the subsequent termination of a custodial employee; that Gawlinski has evaluated the full-time custodians; that the Head Custodian has resolved custodial employee "complaints" with respect to working conditions, although, a major complaint would be referred to the District Administrator; and that Gawlinski, as the Head Custodian, received an hourly rate of \$7.85, over \$2.00 per hour more than the next highest paid custodian; and that Gawlinski exercises supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employee.

9. That the District employs five full-time cooks and a part-time cook to prepare and serve both a breakfast and lunch; that Doris Denninger, the Head Cook, Marge Allen, Phyllis Groat, and Susan Rich, the part-time cook, are employed at the high school, while Helen McCumber and Elsie Carlson work at Gordon Elementary; that Denninger prepares the lunch menu for both the high school and Gordon Elementary, and Rich prepares the breakfast menu for the high school, and McCumber prepares the breakfast menu for Gordon Elementary; that Denninger does not visit Gordon Elementary to witness the preparation of a meal, nor does she direct the activities of the cooks at Gordon Elementary; that Rich's responsibility is to prepare and serve breakfast from 6:30 a.m. to 9:00 a.m., although Denninger may help her, if necessary; that both Marge Allen and Phyllis Groat work from 8:00 a.m. to 2:00 p.m. while Denninger's hours are 6:30 a.m. to 1:15 p.m.; that, while Denninger directs the activities of Allen and Groat after they are finished cleaning pots, pans and dishes, all three employees engage in the preparation of the noon meal which is served by them from 11:00 a.m. to 1:00 p.m.; that Denninger orders food for both the high school and Gordon Elementary and can replace small equipment; that although Denninger evaluated the cooks on one occasion, she does not hire, fire, discipline, promote or transfer employees or effectively recommend such actions; that Denninger, who was hired on March 9, 1981, has not scheduled work shifts and does not approve requests for time off or vacation; that the majority of Denninger's time is spent in the preparation of food, along with the other cooks at the high school; that Denninger is primarily supervising an activity, i.e., the preparation and serving of meals to students, rather than primarily supervising employees.

10. That during the 1981-1982 school year, and through the summer of 1982, the District employed Vicky Brandl, a CETA employee, as a part-time clerical employee; that during the 1981-1982 school year the District employed Sandy Wright and Laura Frees as full-time CETA custodial employees; that during the summer of 1982 the District employed four full-time CETA custodial employees, one of whom, Norman Petersen, was retained as a full-time employee by the District and whose CETA contract expires shortly before the end of the current calendar year; that the District anticipates hiring three part-time students through CETA as custodial employees to work after normal school hours; and that at the hearing, the parties took no position regarding the inclusion or exclusion of CETA employees in the bargaining unit.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time non-certified employees of the Northwood School District, excluding all managerial, supervisory and confidential employees, constitutes an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

2. That the CETA funded positions are occupied by municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act and that the occupants of these positions are included in the collective bargaining unit found to be appropriate herein and are eligible to vote in the instant election.

3. That the occupant of the position of School Accountant is a managerial/confidential employe and therefore not a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

4. That the occupant of the Administrative Secretary position is neither a supervisory employe within the meaning of Section 111.70(o)(1) of the Municipal Employment Relations Act, nor a confidential employe and, therefore, said occupant is a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

5. That the occupant of the Head Custodial position is a supervisor within the meaning of Section 111.70(o)(1) of the Municipal Employment Relations Act and therefore is not a municipal employe within the meaning of Section 111.70(1)(b) of said Act.

6. That the occupant of the Head Cook position is not a supervisor within the meaning of Section 111.70(o)(1) of the Municipal Employment Relations Act and therefore is a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

7. That a question concerning representation, within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act has arisen among the employes included in the appropriate collective bargaining unit set forth above.

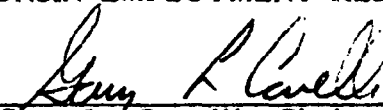
Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DIRECTION OF ELECTION

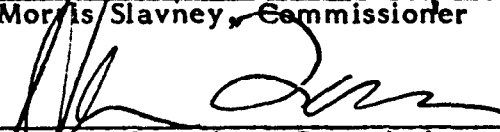
IT IS HEREBY directed that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Direction in the collective bargaining unit consisting of all regular full-time and regular part-time non-certified employes of the Northwood School District, excluding all managerial, supervisory and confidential employes, who were employed on October 20, 1982, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by Chequamegon United Teachers for the purpose of collective bargaining with the Northwood School District, on wages, hours and conditions of employment.

Given under our hands and seal at the City of
Madison, Wisconsin this 20th day of October, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

The Union herein seeks an election among the non-certified employees of the District to determine whether said employees desire to be represented by it for the purposes of collective bargaining. Said employees are presently unrepresented. The parties have agreed upon the description of the appropriate unit, which is set forth in the Findings and in the Conclusions of Law, as well as in the Direction. Apparently bus drivers are not considered employees by either the Union or the District. One of the exhibits introduced during the course of the hearing herein indicates that said individuals are "contract drivers".

While during the course of the hearing the parties voiced no position as to whether CETA positions should be included in the unit, the occupants thereof, provided they are regular full-time or regular part-time positions, are deemed to be included in the unit, regardless as to the source of funds provided for such positions. 1/

While the parties have agreed to the description of the bargaining unit, issues have arisen as to whether the occupants of certain positions are "employees" within the meaning of the provisions of the Municipal Employment Relations Act (MERA). The District would exclude the Accountant, the Administrative Secretary, the Head Custodian as well as the Head Cook from the unit, on the bases noted.

The District contends that the positions noted above, and in issue herein, possess in some degree or other duties and responsibilities which mandate that the Commission conclude that they are not "municipal employees" within the definition set forth in Section 111.70(1)(b) of MERA, in that the duties and responsibilities assigned to them are managerial, supervisory, confidential, or a combination thereof.

In determining whether a position has managerial status, the Commission considers the degree to which individuals participate in the formulation, determination and implementation of management policy and possess the authority to commit the employer's resources. 2/

Section 111.70(1)(o)1 of MERA defines the term "supervisor" as follows:

. . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

In its interpretation of the above definition, the Commission has on numerous occasions, listed the following factors as those to be considered in the determination of an individual's supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;

1/ Janesville Jt. School District, (13617) 5/75; Solon Springs School District, (18200) 10/80.

2/ Milwaukee VTAE, (8736-B) 6/79.

4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 3/

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employee to be a supervisor. 4/

In order for an employee to be considered a confidential employee, and thereby excluded from the bargaining unit, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purpose it must be the type of information (1) that deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer; and (2), is not available to the bargaining representative or its agents. 5/ The Commission has also held that a de minimis exposure to confidential labor relations materials is an insufficient ground for excluding an employee from a bargaining unit.


We have reviewed the responsibilities and duties of the occupants of the positions in issue in light of the above criteria, and we have come to the conclusion that the Accountant position is both managerial and confidential, that the Administrative Secretary, at the most, performs a de minimis amount of confidential and supervisory duties, and therefore is deemed to be an "employee" within the meaning of MERA, as is the Head Cook, whose supervisory responsibilities are but minimal. On the other hand, the Head Custodian's duties and responsibilities satisfy the Commission that the position is supervisory.

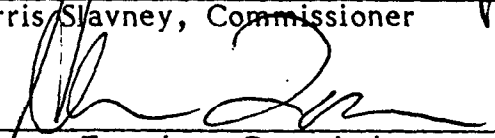
Dated at Madison, Wisconsin this 20th day of October, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

3/ Augusta School District, (17944) 7/80. Cornell School District, (17982) 8/80.

4/ Lodi Jt. School District, (16667) 11/78; City of Lake Geneva, (18507) 3/81.

5/ Wisconsin Heights School District, (17182) 8/79; CESA No. 4 (14177-A) 7/82.

6/ Ibid.