

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
NORTHWEST UNITED EDUCATORS
Involving Certain Employees of
FREDERIC SCHOOL DISTRICT

Case 30
No. 65280
ME-1158

Decision No. 22583-B

Appearances:

Tim A. Schultz, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin, 54868, appearing on behalf of Northwest United Educators.

Victoria L. Seltun, Weld, Riley, Prens & Ricci, S. C., Attorneys at Law, 3624 Oakwood Hills Parkway, Eau Claire, Wisconsin 54702, appearing on behalf of the Frederic School District.

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

On November 2, 2005, Northwest United Educators (NUE) filed a petition with the Wisconsin Employment Relations Commission by which it sought to clarify an NUE-represented bargaining unit of Frederic School District employees by the inclusion therein of two positions described in the petition as Food Supervisor and Director of Operations (K-6). The District opposes the petition asserting that the incumbents in the two positions are managerial employees and supervisors.

A hearing on the petition was held on January 19, 2006 in Frederic, Wisconsin, before Paul Gordon, Commissioner. Post-hearing briefs were filed and the record was closed on March 23, 2006 when the parties advised the Commission that they would not be filing reply briefs.

No. 22583-B

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Frederic School District, herein the District, is a municipal employer with offices at 1434 Clam Falls Drive, Frederic, Wisconsin.

2. Northwest United Educators, herein NUE or the Union, is a labor organization with offices at 16 John Street, Rice Lake, Wisconsin. The District and NUE are parties to a collective bargaining agreement which contains the following recognition clause:

The Board hereby recognizes the Association as the exclusive collective bargaining representative of all regular full-time and regular part-time noncertified employees of the Frederic School District, excluding the Financial Secretary, the Assistant Financial Secretary, all supervisory, managerial, temporary, confidential, casual, and substitute employees of the District as well as all other employees of the District.

3. The District operates a public school system. It has several school buildings, one of which is an elementary school. The elementary school has not had a full-time principal since the 2001 school year. Since 2002, the responsibilities of Elementary School Principal have been filled variously by a part-time Elementary School Principal, the High School Principal, or the Superintendent of Schools. At present, Superintendent Jerry Tischer serves as Elementary School Principal and is present in the elementary school an hour or two per day. Tischer is available by telephone if issues arise that require his attention while he is not present at the elementary school. In addition, Kelly Steen serves as an Assistant Elementary School Principal four hour per day in the morning and teaches in a different building in the afternoon.

The elementary school is also staffed by Director of Operations Elementary School Rhonda Jensen. Jensen was hired by the District in 1981 as an aide and assumed the duties of Elementary School Secretary in the fall of 1996. In the fall of 2005, the District abolished the bargaining unit position of Elementary School Secretary, created the non-bargaining unit position of Director of Operations Elementary School and filled the position with Jensen.

4. The job description for the Elementary School Secretary position read as follows:

Mission Statement

The elementary school secretary is appointed by the Board of Education and is responsible to the elementary principal for all secretarial activities in the PK-6 program.

Position Goals

The elementary school secretary will assist the elementary principal with secretarial tasks in carrying out his/her educational and support program responsibilities.

To assist in ensuring maximum utilization of the available resources in carrying out the above goal.

Performance Responsibilities

1. Serve as a receptionist of the elementary principal's office.
2. Assist in the management and execution of student accounting.
3. Assist in the preparation and execution of the PK-6 budget.
4. To tabulate and summarize elementary school breakfast and lunch data monthly.
5. To assist with the organization of the summer school program.
6. To assist with the organization of the school district transportation program.
7. To execute the elementary Student Insurance claims.
8. To assist in collection of money (activity, swim season, school breakfast and lunch money, etc.).
9. To collect and produce school census information.
10. To assist in the preparation of reports pertaining to the PK-6 building.
11. To distribute materials ordered, checking of purchase orders and invoices pertaining to the PK-6 building.
12. All others not listed and those directed by the elementary principal.

Revised 1-13-97

5. The job description for the Director of Operations Elementary School reads as follows and accurately summarizes the Director's basic responsibilities:

Mission Statement

The elementary school director of operations is appointed by the Board of Education and is responsible to the elementary principal for all secretarial activities in the PK-6 program.

Position Goals

The elementary school director of operations will assist the elementary principal with secretarial tasks in carrying out his/her educational and support program responsibilities.

To assist in ensuring maximum utilization of the available resources in carrying out the above goal.

Performance Responsibilities

1. Serve as a receptionist of the elementary principal's office.
2. Assist in the management and execution of student accounting.
3. Assist in the preparation and execution of the PK-6 budget (checking of purchase orders and invoices pertaining to the PK-6 building, distribute materials ordered,,). (sic)
4. To assist with the organization and management of the summer school program.
5. To assist with the organization of the school district transportation program (coordinate route and extra-curricular schedules, school vehicles, and dispatch).
6. To execute the elementary Student Insurance claims.
7. To assist in collection of money (activity, swim season, school breakfast and lunch moneys, etc.).
8. To collect and produce school census information.
9. To assist in the preparation of reports pertaining to the PK-6 building.
10. To record and dispense medications to students.
11. To direct activities within the PK-6 Office.
12. To work with the principal and dean of students in the delivery of services.
13. Student discipline.
14. Assist the maintenance supervisor in dispatch and coordination of services.
15. Schedule facility usage by in-school and non-school organizations.
16. Involved in class schedule development and modification.
17. Attend appropriate committee meetings.
18. All others not listed and those directed by the elementary principal.

6. The elementary school has three full-time aides and one part-time aide, who supervise the playground, lunchroom, library, recess and perform some office work. Director Jensen schedules the aides' work and when doing so attempts to equalize workload and work locations. If a disciplinary issue arises with one of the aides, Jensen refers the matter to the Superintendent for any action. Jensen has not evaluated the performance of any aide but is scheduled to do so in the future. Jensen plays no role in the hiring of aides.

7. Jensen prepares the elementary teachers' schedule for hall duties and supervising students on the playground in the morning and seeks to equalize workload and location when doing so. As part of the District's evaluation of teachers, Jensen provides input regarding teachers coming to work on time and fulfilling their hall and playground duties.

8. The District has bus service for students, employing six regular drivers and two substitute drivers. Jensen prepares the bus routes and conducts a drivers' meeting before school starts. She also serves as bus dispatcher and schedules busing for extra curricular

activities, including field trips. She has authority to prioritize requests for buses.

Page 5

Dec. No. 22583-B

If a parent raises concerns about a bus driver's performance, Jensen attempts to resolve the concern to the parent's satisfaction. If she is unable to do so, she refers the matter to the Superintendent. She does not discipline or effectively recommend discipline of bus drivers. She does not evaluate their performance but provides input to those who do. When bus drivers are hired, Jensen does background checks on applicants but does not effectively recommend who should be hired.

9. Jensen provides information as to the prior year's expenditures to the Financial Secretary for her use in the preparation of the proposed budget for the elementary school. After the School Board approves a budget, Jensen administers the elementary school portion of the budget as to expenditures teachers make for supplies, books and other classroom materials. Jensen has authority to spend monies for minor purchases out of a reserve account.

10. Jensen monitors student attendance. She recommended to the Superintendent that a letter be sent to parents if a student misses a certain number of days, which recommended procedure was subsequently adopted by the School Board.

11. The District usually operates a summer school program for all grades which consists of about 30 classes, such as swimming, colors and numbers, arts and crafts, fishing, computers, math, reading, keyboarding, etc. Jensen schedules the classes, registers students, and seeks volunteers from existing teaching staff to teach summer school classes. If insufficient staff volunteer, Jensen contacts community members who have taught summer school in the past to see if they are interested in working.

12. Jensen independently handles student disciplinary matters in the absence of the elementary principal, up to two or three times per week. She follows a progressive discipline guideline, which includes talking to the students and reporting the matters in a computer program, along with contacting parents. When making disciplinary decisions, she may seek input from teachers and parents. She has suspended a student once in an incident that also involved a medical condition of the student. The student was not able to function and went home with the parent.

13. Jensen schedules use of the elementary school building by outside organizations using a calendar to see if the building has previously been scheduled for us. She has authority to grant or deny usage of the building if there is a scheduling conflict. Issues as to whether the proposed use of a building is appropriate are decided by the Superintendent.

14. Jensen attends faculty meetings and has attended management staff meetings as needed.

15. Jensen is paid \$15.00 per hour as Director of Operations. The most recent (2001-2003) collective bargaining agreement contains a wage rate for Elementary School Secretary of \$12.34 per hour.

16. The Director of Operations Elementary School does not possess supervisory authority in sufficient combination and degree to be a supervisor.

17. The Director of Operations Elementary School does not sufficiently participate in the formulation, determination and implementation of management policy or have sufficient authority to commit the District's resources to be a managerial employee.

18. The School District operates a food service program in both of its school buildings. Currently there are four full-time and two part-time food service employees including the bargaining unit position of Head Cook. The District proposes to fill the currently vacant non-bargaining unit position of Food Service Supervisor and eliminate the Head Cook position. While the Food Service Supervisor position was vacant, the Head Cook served as lead worker and other Supervisor duties were spread among a variety of District employees or not performed.

19. The job description for the Head Cook position reads as follows:

Mission Statement

The head cook is appointed by the Board of Education and is responsible to the superintendent for the school district lunch and breakfast programs.

Position Goals

To coordinate and supervise all district school and breakfast programs

To cooperate and provide leadership to ensure maximum utilization of available resources in carrying out the school lunch programs of the school district.

Performance Responsibilities

1. Has responsibility to the building principals for the school lunch and breakfast programs conducted in his/her building.
2. Has responsibility for planning and publishing the school lunch and breakfast menu.
3. To purchase all foods, supplies, etc., for the lunch and breakfast programs
4. Supervise the maintenance of a current inventory of food, supplies, etc., for the effective and efficient operation of the lunch and breakfast programs.

5. Will cooperate in the selection of staff for the lunch and breakfast programs.
6. Will cooperate in preparing work schedules for and supervision of all school lunch and breakfast staff.
7. Will continually explore and promote new ideas, procedures, etc., which will enhance the school lunch and breakfast programs.
8. Will cooperate in the preparation of a budget for the school lunch and breakfast programs
9. Supervise and participate in the preparation, cooking and serving of daily menus.
10. Has responsibility of compiling daily production records and other necessary paperwork for DPI reports.
11. To ensure that sanitary and safe working conditions are maintained in all kitchen areas.
12. All others not listed and those directed by the superintendent.

Revised 3/13/97

20. The job description for the Food Service Supervisor reads as follows and accurately summarizes the authority of the position:

Mission Statement:

The Food Service supervisor is appointed by the Board of Education and is responsible to coordinate school district lunch and breakfast programs. He/she may delegate various responsibilities to other food service staff, but shall be accountable for the operation of the food service program.

Position Goals:

To coordinate and supervise all food service personnel.

To cooperate and provide leadership to ensure maximum utilization of available resources in carrying out the food service programs of the school district.

Performance Responsibilities:

1. Reports to building level principal and is responsible to the

2. Has responsibility for planning and publishing the school lunch and breakfast menu.
3. Responsible for purchase of all foods, supplies, etc., for the food service programs.
4. Supervise the maintenance of a current inventory of foods, supplies, etc., for the effective and efficient operation of the food service programs.
5. Will oversee the selection of staff for the food service programs.
6. Will prepare work schedules for and supervise all food service staff subject to review by the administration.
7. Will continually explore and promote new ideas, procedures, etc., which will enhance the school food service programs.
8. To cooperate in the preparation and take primary responsibility for execution of the budget.
9. Supervise and participate in the preparation, cooking, and serving of daily menus as necessary.
10. Has responsibility of compiling daily production records and other necessary paperwork for DPI reports.
11. To ensure that sanitary and safe working conditions are maintained in all kitchens.
12. To develop and maintain rules and procedures for the smooth and efficient operation for the assigned area of responsibility.
13. Food management system (Identification tickets)
14. Evaluation of all food service employees annually

Contract to extend two weeks before and two weeks after the school year.
Christmas Day holiday (additional to the three granted to 9-month status in contract).

Adopted 4/03/01

21. The Food Service Supervisor will independently schedule, direct and evaluate the work of five food service employees and play a role in the hiring and discipline of said employees.

22. The Food Service Supervisor possesses supervisory authority in sufficient combination and degree to be a supervisor.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The Director of Operations Elementary School is not a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., or a supervisor within the meaning of

Sec. 111.70(1)(o)1, Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Page 9
Dec. No. 22583-B

2. The Food Service Supervisor is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

1. The Director of Operations Elementary School is included in the bargaining unit described in Finding of Fact 2.

2. The Food Service Supervisor is excluded from the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of August, 2006.

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

FREDERIC SCHOOL DISTRICT

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

DISCUSSION

We will first consider whether the Food Service Supervisor and Director of Operations Elementary School are supervisors who therefore must be excluded from the bargaining unit.

Section 111.70(1)(o)1, Stats. defines a supervisor as an individual who:

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

When interpreting this statutory language, we consider the following:

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;
4. The level of pay, including an evaluation of whether the alleged supervisor is paid for the employee's skills for the supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether the employee spends a substantial majority of time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

TAYLOR COUNTY, DEC. No. 24261-F (WERC, 5/98).

Not all of the above factors need be present for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01); SOMERSET SCHOOL DISTRICT, DEC. NO. 24968-A (WERC, 3/88).

Food Service Supervisor

As reflected in the Findings of Fact, this position has been vacant for several years but certain of the position's job responsibilities have been performed by the bargaining unit lead worker position of Head Cook and by other District employees. The supervisory components of the Food Service Supervisor's job responsibilities, such as evaluating food service employees, have gone undone or there has been no need (hiring and discipline) for them to be performed. The District has now decided to fill the Supervisor position and to eliminate the Head Cook position.

Because the position has been vacant for several years, there is no current evidence as to how the position is actually functioning in the workplace. While there is evidence as to the role played by the former Supervisor, that evidence is less than conclusive because a new Superintendent is now present and the skills and abilities of the former Supervisor may well have played a significant role in the amount of authority she was given. In addition, the testimony as to the supervisory authority to be exercised by whomever fills the position was somewhat less than definitive as to the critical areas of hiring and discipline. However, we are satisfied from the job description and the evidence as a whole that it is the District's intention to give the Food Service Supervisor sufficient supervisory authority to warrant exclusion from the unit as a supervisor.

Turning to a specific consideration of the relevant supervisory factors recited above, the record definitively establishes that the Supervisor will direct the work of five employees on a daily basis and will be responsible for evaluating their job performance. Given the many responsibilities of the Superintendent, it is also clear that, although he also has supervisory authority over the food service employees, that authority will rarely be exercised. While the Supervisor will be performing some of the same work as the food service employees, it is clear that a variety of other duties, including directing the work of employees, will also be performed on a daily basis. As noted earlier, the precise extent of the Supervisor's role in hiring and discipline is somewhat murky. While we are satisfied that the Supervisor will play a role in both of these critical areas, it is not clearly established as to whether that role will rise to the level of effective recommendation of hiring and discipline or what independent disciplinary authority the Supervisor may have beyond a verbal reprimand. Without the authority to make effective recommendations as to hiring and/or serious discipline, the supervisory status of this position is questionable. Should it prove to be the case that the filled position does not have such effective authority, NUE may file a unit clarification petition, and we will revisit the supervisory status of the Food Service Supervisor.

Because we have concluded that the Food Service Supervisor is a supervisor, we need not and do not decide whether the Supervisor is also a managerial employee.

Director of Operations

The Director of Operations was formerly the Elementary School Secretary, a bargaining unit position. As Elementary School Secretary and now as Director of Operations, the incumbent did and does play an important role in the successful operation of the elementary school. Our task is to determine whether that role contains sufficient supervisory authority to warrant a conclusion that the Director is a supervisor. We conclude it does not.

As to Factor 1, the District argues that the Director “hires” summer school teachers. The record establishes that this “hiring” typically consists of the Director asking current teachers whether they are interested in summer school work. Because the individuals in question are already employees, they are not being “hired” but rather asked if they wish to perform additional work for the District. Thus, while the Director has discretion to decline to offer summer school work to teachers who have not performed satisfactorily in the past, the Director is not deciding whether or not to “hire” them, because the teachers are already employees of the District. A similar analysis applies when the Director contacts community members who have successfully taught summer school in the past to see if they are interested in teaching again. While this is “hiring” the community members in a sense, it does not carry the same weight in the analysis of supervisory status because the Director is not choosing from an open applicant pool but rather contacting former successful employees to see if they wish to return. While the Director does participate in the hiring process for bus drivers by checking the references of applicants, she does not effectively recommend who should be hired. The Director plays no role in the hiring of aides.

The Director does not promote, transfer or reward any employees or effectively recommend same. She has not disciplined anyone and the record establishes that her disciplinary role is limited to passing job performance concerns on to her superiors.

Turning to Factor 2, the Director schedules hallway, recess, library, lunchroom and playground duty for the classroom aides and teachers. She serves as dispatcher for the bus drivers whose regular schedules and routes are finalized at a drivers meeting that she conducts.

Concerning Factor 3, there are four aides (three full-time and one part-time) in the elementary school building along with six regular bus drivers and two substitutes. Both the Superintendent/Elementary School Principal and the Assistant Elementary School Principal exercise direct supervisory authority over these employees and one or the other of these individuals is present in the elementary school during a majority of the work day.

As to Factor 4, the Director is paid about \$2.50 per hour more than she would be if she were still a bargaining unit employee. However, because she has very limited supervisory authority and that authority did not increase when she became Director, we conclude that the additional compensation does not reflect supervisory status.

In regard to Factors 5 and 6, the record establishes that the Director is primarily supervising activities rather than employees and spends very little time directing the work of employees. As accurately reflected in her job description, the Director's duties focus on the processing of information and working with a number of different employees, students and the general population, as opposed to the direct supervision of other employees.

Concerning Factor 7, the Director exercises some independent judgment as to her very limited supervisory responsibilities.

Considering all of the above factors, it is clear the Director does not possess supervisory authority in sufficient combination and degree to be a supervisor. Her hiring authority is more akin to soliciting volunteers, and she does not effectively recommend discipline, does not directly supervise any employees, and spends little time directing the work of other employees. She does not currently evaluate any employees. Thus, contrary to the District's arguments, the Director is clearly distinguishable from the High School Secretary found to be a supervisor in DEPERE SCHOOL DISTRICT, DEC. NO. 25712-A (WERC, 10/90), who spent a significant portion of her day directly supervising four employees and played a major role in hiring decisions.

Having concluded that the Director is not a supervisor, we next turn to the issue of whether the Director is a managerial employee.

In MILWAUKEE V. WERC, 71 Wis. 2D 709, at 716 (1976), the Wisconsin Supreme Court affirmed the Commission's definition of managerial employees as:

. . . those who participate in the formulation, determination and implementation of management policy or possess effective authority to commit the employer's resources.

The Court went on to discuss why the policy component of the Commission's managerial definition was consistent with the Municipal Employment Relations Act. The Court stated at 717 the following:

The exclusion of management personnel, as well as certain other categories, such as supervisors and executives, indicates that not all municipal employees are to have the benefit of dispute resolution through collective bargaining. However, the ability of a certain category of employees to effectuate and implement management policy does not necessarily indicate that they should be precluded from protection by the statute. The definition that has been formulated by WERC effectively distinguishes those categories of employees whose interests are shared by persons engaged in a managerial capacity from those categories who are otherwise employed. By defining the managerial exclusion so as to encompass those who formulate and determine policy, as well as implement it, WERC formulated a definition which is consistent with the

purposes of the Act and the legislatively expressed intent to exclude managerial employees.

Thus, it is clear that to be a managerial employee based on one's policy role, the employee must "formulate and determine policy, as well as implement it." Thus, for instance, applying this policy test for managerial status in *EAU CLAIRE COUNTY V. WERC*, 122 Wis. 2D 363 (1984), the Court of Appeals concluded that a register in probate was not a policy-based managerial employee, because the circuit court had final approval over all of the position's activities.

Lastly, it is important to emphasize that not all policy determinations qualify an individual as a managerial employee. Consistent with the purpose of the managerial exclusion as one which serves to distinguish individuals whose interests are distinct from those in the bargaining unit, policy making must be at a "relatively high level" to warrant managerial status. *TAYLOR COUNTY, DEC. NO. 24261-E (WERC, 7/97)*.

As noted above, the second path to managerial employee status involves the effective authority to commit the employer's resources. In *KEWAUNEE COUNTY V. WERC*, 141 Wis. 2D 347, at 355, (1987), the Court of Appeals affirmed the Commission's determination that "effective authority to commit the employer's resources" at a managerial level means possessing:

. . . the discretionary power to determine the type and level of services to be provided and the manner and means by which those services will be delivered.

and involves:

. . . determining the services required, the number of persons necessary to deliver those services, and the quantity and type of equipment and supplies required to provide those services.

As to the policy formulation path to managerial status, the District cites the Director's recommendation, through the Superintendent, that a letter be sent to parents of children if a certain number of days at school are missed. The School Board adopted this recommendation. However, we are persuaded that this type of policy involvement is not policy formulation at the "relatively high level" that is indicative of managerial status, but rather is an procedural implementation of the District's already established truancy policy. The District also cites the Director's role in student discipline and in the District's transportation and summer school programs as being supportive of managerial status. However, the Director's role in these matters again is that of implementing District policy, not policy formulation at a "relatively high level." Thus, the Director is not a managerial employee based on her policy role.

As to the Director's authority to commit District resources, her authority is limited to approving individual teacher requests to use already budgeted amounts for books instead of

pencils and to making expenditures out of a reserve account for routine items. Such authority does not rise to the level of determining the type and level of services to be provided by the District. The Director does assemble information regarding the prior year's expenditures for the District's use in developing that portion of the District's next budget attributable to the operation of the elementary school. However, this budgetary role is ministerial as opposed to managerial, because it does not place the Director in a position to effectively make service level choices or determine how those services will be provided. Thus, the Director is not a managerial employee based on her authority to commit the District's resources.

In summary, while it is apparent that the Director of Operations plays an important role in the successful operation of the elementary school, that role does not rise to the level of a supervisor or a managerial employee. Thus, the Director is placed in the NUE bargaining unit.

Dated at Madison, Wisconsin this 1st day of August, 2006.

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

