

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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DEPERE EDUCATION ASSOCIATION :
  
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Involving Certain Employes of : Case 15
  
: No. 42979 ME-363
  
: Decision No. 26572
  
DEPERE UNIFIED SCHOOL DISTRICT :
  
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Appearances:

Mr. Ron Bacon, Executive Director, United Northeast Educators, 1136 Military Avenue, Green Bay, Wisconsin 54303, appearing on behalf of the Association.  
Melli, Walker, Pease & Ruhly, S.C., by Mr. James K. Ruhly, 119 Martin Luther King Jr. Blvd., Suite 600, Madison, Wisconsin 53701-1664, appearing on behalf of the District.

FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER  
CLARIFYING BARGAINING UNIT

DePere Education Association, having filed the instant petition with the Wisconsin Employment Relations Commission on October 17, 1989, requesting that the Commission clarify the voluntarily recognized collective bargaining unit consisting of "all professional staff members, excluding substitute teachers, supervisory and managerial personnel" to include two positions, Health Services Coordinator (School Nurse) and Gifted and Talented Coordinator, which positions were created after voluntary recognition occurred; and hearing having been held in abeyance until settlement efforts failed; and thereafter, a hearing having been held on January 29, 1990 at DePere, Wisconsin before Examiner Sharon Gallagher Dobish, a member of the Commission's staff; and a stenographic transcript of the proceedings having been made and received on February 15, 1990; and all briefs having been received and exchanged by the Examiner by April 13, 1990; and the Commission having considered all of the evidence and arguments herein and being fully advised in the premises, hereby makes the following

FINDINGS OF FACT

1. That the DePere Education Association (hereafter the Association) is a labor organization with offices located c/o United Northeast Educators, 1136 Military Avenue, Green Bay, Wisconsin 54303.

2. That the DePere School District (hereafter the District) is a municipal employer and has its offices located at 1700 Chicago Street, DePere, Wisconsin 54115.

3. That in the late 1960's, the District voluntarily recognized the collective bargaining unit in issue here which is described as follows in the parties' 1987-89 collective bargaining agreement:

The Board recognizes the Association as the sole representative for negotiations in regard to wages, hours and conditions of employment for all professional staff members excluding substitute teachers, supervisory, and managerial personnel. These professional staff members are referred to as teachers hereafter in other parts of the contract;

and that neither the Association nor the District proposed to change the recognition clause of the 1987-89 collective bargaining agreement when negotiations opened for a new agreement in the Spring of 1989.

4. That the positions of Gifted and Talented Coordinator (hereafter GTC) and Health Services Coordinator (hereafter HSC) are currently excluded from the unit represented by the Association; and that the District contends the Gifted and Talented Coordinator is a supervisory employe and asserts that the Health Services Coordinator is a confidential/managerial employe.

5. That approximately four or five years ago, the District initiated a program for Gifted and Talented (hereafter GT) students; that from its inception until the 1989-90 school year began, the District employed a part-time (50%) GT Aide, Mary Garber, who worked under the guidance and supervision of the Building Principals; that the GT program was originally conceived as a mentoring program in which teachers who volunteered to be mentors would work with students outside of regular school time in educational areas where the

students had been identified by the GT Aide as gifted and talented; that teachers who volunteered for mentoring then received released time from their contracts in recognition of the time spent mentoring; that although this mentoring portion of the GT Program is still functioning in the District, as of the 1989-90 school year, the District decided to change the thrust of the GT Program to one primarily delivered by the classroom teacher in conjunction with the regular education program; that the GT Aide, Garber, had no input into this District decision; that as of the 1989-90 school year, the District has provided the GT Program for identified GT students in grades 2 through 9; that the District's long range plan is to provide GT programming to GT students in their classrooms in grades 2 through 12; that due to the classroom setting delivery of the GT Program, a teacher may or may not have GT students assigned to his/her classroom in succeeding years by the Building Principal (who normally makes such assignments), and, therefore, a teacher may or may not be involved in the GT Program from year to year; that to date the factor determining whether a teacher will be involved in the GT Program has been the Principal's assignment of a GT student or students to the teacher's classroom; that the GT Program is a State-mandated program; that the GT Coordinator to date has had no role in hiring or selecting teachers for the GT classroom Program; that for the 1989-1990 school year, the District elevated Mary Garber, then GT Aide, to GT Coordinator and Garber was asked to sign and did in fact sign the following individual employment contract which reads in relevant part as follows:

GIFTED AND TALENTED COORDINATOR AGREEMENT

NAME:MARY O. GARBER

This document will serve as an agreement between the above named person and the Unified School District of DePere.

Ms. Mary Garber will be employed as Gifted and Talented Coordinator for the 1989-90 school year. This will be a 75% position.

Compensation for these duties will be computed on the salary schedule at Bachelor + 8 graduate credits with 5 years experience for a total of \$17,271.00.

that Garber's supervisor is Mrs. Wanda Richards, Director of Curriculum/ Instruction and Staff Development; that Mrs. Richards is a member of the District's management team and she is not involved in the day-to-day implementation, delivery or monitoring of the GT Program; that Garber has the Wisconsin teaching certification required for the GT Coordinator position; that an administrative or supervisory certification is not required for the position and Garber does not possess these certifications; that the Building Principals do not evaluate teacher performance in the delivery of the GT Program to GT students; that the "Gifted/Talented Coordinator" job description reads as follows:

Qualifications:

1. Must have graduate coursework in gifted education.
2. Must have Wisconsin teaching certification.
3. 2 years experience working with a gifted/talented program, is desirable.
4. Must possess an interest and ability in working harmoniously with teachers, administrators, parents and community for the benefit of G/T students.
5. Must have demonstrated leadership and organizational skills.

Reports to: Director of Curriculum/Instruction and Staff Development.

Job Goal: The Gifted/Talented Coordinator shall plan, monitor and support systematic programming options for identified G/T students beginning with differentiation of the regular classroom curriculum.

Performance Responsibilities:

1. Coordinate and implement identification process.
2. Oversee all of pyramid model for integrated gifted education.

3. Keep staff and parents informed of program process for identified students.
4. Recruit and train volunteers to work with G/T students.
5. Maintain a G/T resource area in each building.
6. Evaluate program and recommend changes based on latest research.
7. Oversees (sic) the development and implementation of the district's long range G/T plan.
8. Develop staff inservice on various methods for servicing G/T students.
9. Serve as a consultant to curriculum committees for G/T adaption.
10. Assume other responsibilities as assigned by the Director of Curriculum/Instruction and Staff Development.

that since the beginning of the 1989-90 school year, there has not been a situation where a classroom teacher has failed to do what is expected of them by the GT Coordinator to deliver the GT Program; that the GT Coordinator has not had any role in discharge or discipline during the 1989-90 school year and, to date, she has not been told that she will or that she will not have a role in such disciplining or discharge of teachers who are involved in the GT Program; that the GT Coordinator has not recommended the hire, promotion, or transfer of any teacher involved in the GT Program; and that as the District envisions the GT Coordinator job, the GT Coordinator would not be directly responsible for discipline but would report problems to the Building Principal and/or Richards and they would act thereon.

6. That the GT Coordinator is responsible for the planning, implementation, monitoring and evaluation of the GT program, and the identification of GT students with the assistance of classroom teachers; that the GT Coordinator observes/discusses the performance of individual classroom teachers involved in the GT program, but as of the date of the instant hearing, Garber has not been required or requested to formally evaluate teachers delivering the GT Program and Garber has not formally evaluated the over-all GT Program as yet (the latter being a requirement for Garber in 1989-90); that during a typical work day, Garber travels to all three District schools; that, Garber spends approximately 1/2 of her 75% worktime position meeting with and 2observing classroom teachers, including talking with teachers about GT plans and options, identifying GT students, and observing student classroom performance during delivery of the GT program; that Garber spends about 1/7 of her work time teaching GT students such courses as "Bloom's Taxonomy" and "Great Book Club" and demonstrating GT program segments in classrooms, grades 2 through 9; that Garber also spends a portion of each day meeting with administrators and parents of GT students and keeping records relating to the program of each GT student and the identification of GT students; that prior to the creation of the GT Coordinator position, Garber (as GT Aide) did not have an official job description, nor was she officially allowed to work directly with GT students; that should a disagreement arise between a classroom teacher and Garber regarding how the GT Program should best be delivered in a classroom, Garber would call in Mrs. Richards to resolve the dispute; that such disagreement has not arisen during the 1989-90 school year; and that the GT Coordinator will have a role in developing and delivering GT in-service programs for classroom teachers, although Garber has not been involved in this heavily to the date of hearing.

7. That Margaret Hempel is the incumbent Health Services Coordinator and she is certified as a Psychiatric Nurse; that Hempel also possesses a lifetime teacher certification for grades 1-8; that Ms. Hempel was initially hired by the District in October, 1988, to fill the School Nurse position; that prior to hiring Ms. Hempel as School Nurse, the District had employed another individual in the School Nurse position since its creation in approximately the 1987-88 school year; that prior to the 1989-90 school year, Ms. Hempel was asked to sign and did in fact sign the following individual employment contract which reads in relevant part as follows:

Name: Margie Hempel

This document will serve as an agreement between the above named person and the Unified School District of DePere.

Ms. Margie Hempel will be employed as Health Services Coordinator for the term of August 28, 1989 to August 27, 1990. Contract days shall include the 1989-90 school calendar plus ten "follow through" days in

June, July and August 1990.

Compensation for these duties shall be \$24,000.00. This amount shall be paid in twenty-four (24) equal installments over the term of this contract;

that also at this time, the District gave Ms. Hempel a new job description which re-named her School Nurse position, "Health Services Coordinator"; that the Health Services Coordinator job description reads as follows:

GOAL: To work within the educational process so as to encourage students and staff to obtain an optimal level of health by the identification and intervention to actual or potential health problems one may encounter and to utilize health education that would promote informed decision making that would maintain or lead to ones (sic) optimal level of health.

RESPONSIBILITIES;

I.HEALTH ASSESSMENT

A)Direct screening of students and/or staff;

- 1)Coordinate the vision screening program and be responsible for individual follow-up and/or referral.
- 2)Coordinate the hearing screening program and be responsible for individual follow-up and/or referral.
- 3)Coordinate the scoliosis screening program and be responsible for individual follow-up and/or referral.
- 4)Provide for a blood pressure screening program.
- 5)Provide for physical assessments as needed.
- 6)Attend kindergarten screening program.

B)Communicable Disease Control:

- 1)Review all immunization records and maintain all students at current required levels.
- 2)Screen individuals or classroom groups as indicators arise and refer to parents, or other appropriate source, as needed.
- 3)Establish, maintain, review and enforce district communicable disease policy.
- 4)Work with student, family and community agencies as needed to prevent the acquisition or spreading of disease.

C)Health Records:

- 1)Obtain health history on students annually.
- 2)Maintain current information on students with chronic health conditions which may influence their education.
- 3)Identify students not receiving regular health care and implement a plan of care.

II.HEALTH COUNSELING

A)Provide counseling for individuals, families or groups:

- 1)Nutrition
- 2)Disease control or management
- 3)Growth and Development
- 4)Sexuality
- 5)Family change
- 6)Health risks
- 7)other health related areas.

B)Intervention based on counseling:

- 1)Crisis Intervention
- 2)Facilities collaboration between staff, parents or professionals
- 3)MD referral and liaison
- 4)Community referral and liaison
- 5)Construct, implement and maintain nursing plan of care.

III.HEALTH MAINTENANCE

A)Special Education

- 1)Coordinate services for students that have special physical, psychological or developmental health needs

2)Attend multi-disciplinary team (M-team) meetings as indicated

3)Act as liaison for school, family and physician.

B)Safe Environment

1)Establish guidelines for safe environment

2)Establish accident, illness policy.

C)Health Coordination

1)Establish policy for the administration of medication and special diets

2)Coordinate and provide care for students with chronic illness

3)Provide resource for staff.

IV.HEALTH EDUCATION

A)Resource for Teachers

1)Provide information, suggestions and material for classes

2)Be available as resource for health related topics

3)Be available as resource for health related career opportunities.

B)Curriculum

1)Be a member on health related curriculum committees

C)Staff Development

1)Provide ongoing health related staff development opportunities

V.HEALTH INTERVENTION

A)First Aid

1)Provide written guidelines for dealing with common school related illnesses/injuries for first aid counselors.

2)Resource for maintaining school health supplies.

3)Organize and review health room log.

4)Resource for first aid counselors in dealing with sick or injured (sic) students.

5)Provide first aid on an as-needed/as-available basis.

6)Respond to any medical emergencies.

B)Emergency Nursing Services

1)Maintain supplies needed for emergency services.

2)Develop policies/procedures for emergency services.

3)Obtain medical consultant for the district.

VI.PROGRAM MANAGEMENT

A)Community Liaison

1)School-Community for health related topics.

2)De Pere Public Health, Brown County Health, etc.

B)Health Trends

Keep administrators aware of current health trends, health regulations and health risks, and adapt services to deal with these.

C)Policies and Procedures

Develop, implement and evaluate policies and procedures  
related to health issues and services.

D)Record Keeping

1)Prepare and evaluate annual health services budget.

2)Maintain student health records.

3)Maintain documentation of health services.

E)Evaluation

- 1)Provide evaluation of health programs.
- 2)Submit yearly report, evaluation and recommendations.

VII.OTHER DUTIES, as assigned by the district administrator.

8. That Hempel's immediate supervisor is Robert Joswick, Director of Pupil Services who is also the District's in-house representative for grievance handling and negotiations; that Hempel does not assist Joswick in any of his labor relations duties; that Joswick does not supervise Hempel on a day-to-day basis or assign tasks to her, since Hempel knows her job as H.S. Coordinator and does not need day-to-day supervision; that ordinarily Hempel sees Mr. Joswick two or three times per week; that on a typical work day (Mondays), Hempel spends the morning at the Grade School working with classroom teachers regarding any health education needs they have; that Hempel may teach small groups of children in or out of the classroom or she may counsel children one-on-one during this time; that Hempel will also care for and supervise any students at the Grade School who are ill and she will speak to parents about their children's health problems; that in the afternoon on Mondays, Hempel goes to the Middle School where she spends time with students doing individual and peer group counseling and drug and alcohol programming; that after school she also presents a wellness program for Middle School students; that Hempel has office space in each school; that Hempel spends about 15% of her work time annually in the classroom teaching students about health related issues; that as a general matter, Hempel, spends less time teaching in the beginning of the school year when she conducts student learning and vision screening; that beginning in the Spring of each school year, Hempel is able to and does spend more time in the classroom; that one of Hempel's job responsibilities is to be available to students who have been physically or sexually abused; that if a child were to report abuse to Hempel, Hempel would give any written reports she would generate to the School Social Worker (a member of the instant bargaining unit) who maintains the District's files in such matters; that as HSC, Hempel has not kept any abuse information in her own student files because no students have ever reported any alleged abuse to her during the past year; that as of the date of the instant hearing, Hempel had not heard of any complaints of abuse; and that Hempel has performed no duties relating to abuse of students in her HSC position, although at least one physical abuse complaint (a teacher allegedly slapping two students) was made by a student during the past year.

9. That Hempel has not participated in the formulation, determination or implementation of management policy, with the exception of the fact that she drafted District procedural policy regarding when and how certain District employees may give prescribed medications to students; that this medication policy essentially designates a particular School Building employe or employes, usually a clerical employe in each Principal's office, who is to give students prescribed or parentally required medications during the school day and keep records thereof; that this draft policy was subject to approval by the Board of Education; that Hempel has no authority to commit the District's resources by allocating funds for purposes other than those listed in an original budget; that pursuant to the section of Hempel's job description entitled "Program Management . . . D) Recordkeeping," the HSC is expected to "prepare and evaluate annual health services budget" but Hempel has not actually prepared or recommended a Health Services budget or had any role in defending a budget; and that although Hempel's job description indicates that she is expected to "submit yearly report, evaluation and recommendation" Hempel has not yet done any of these tasks as HSC.

10. That the occupant of the position of Gifted and Talented Coordinator does not exercise supervisory responsibilities in sufficient combination or degree to make her a supervisory employe; that the occupant of the Health Services Coordinator position has de minimus input into the formulation, determination and implementation of management policy and does not have sufficient access to or involvement in confidential matters relating to labor relations so as to make her a confidential employe.

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

CONCLUSIONS OF LAW

1. That Garber, the occupant of the Gifted and Talented Coordinator position, is not a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats. and therefore is a municipal employe within the meaning of Sec. 111.70(1) (i), Stats.

2. That Hempel, the occupant of the position of Health Services Coordinator, is neither a confidential nor managerial employe within the meaning of the Municipal Employment Relations Act and therefore is a municipal employe 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 issue the following



ORDER CLARIFYING BARGAINING UNIT 1/

1. That the position of Gifted and Talented Coordinator shall be and hereby is included in the bargaining unit described in Finding of Fact 3 above.

2. That the position of Health Services Coordinator shall be and hereby is included in the bargaining unit described in Finding of Fact 3 above.

Given under our hands and seal at the City of  
Madison, Wisconsin this 1st day of August,  
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

\_\_\_\_\_  
Herman Torosian, Commissioner

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William K. Strycker, Commissioner<sup>2</sup>

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1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

Footnote 1/ Continued on Page 10.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. Unless a rehearing is requested under s. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

POSITIONS OF THE PARTIES:

The parties filed briefs herein. In its brief, the Association argued that the GTC and the HSC should be included in the existing collective bargaining unit professional employees. In this regard, the Association urged that the GTC incumbent has not performed supervisory duties in sufficient combination or degree to warrant the position's exclusion from the unit. The Association also argued that the HSC is neither a managerial nor confidential position and its incumbent should therefore be included in the existing bargaining unit; that the incumbent of the HSC position has not, to date, been involved in the budgetary process or in policy-making on any significant level or to any significant extent; and that the HSC has not, in fact, allocated or committed District funds. Additionally, the Association urged the HSC incumbent has not had any contact with confidential labor relations matters and that unless the medical/counseling information that the HSC might become privy to is found insufficient to meet definition of a "confidential" employe, potentially large numbers of employes might be excluded from representation in the future. Finally, the Association contended that the type of work done -- professional work which contributes to the educational goals of the District -- by both the GTC and the HSC should control their unit placement rather than their relationship to bargaining unit employes.

The District argued in its initial brief that the HSC should be excluded from the bargaining unit as a confidential employe, asserting that the incumbent HSC was hired to assist the District in the detection of abuse; that the HSC is the only employe who could fully perform these duties as envisioned by the District; that the information that the HSC might gather could lead to teacher discipline and therefore that inclusion of the position in the unit had the potential for conflicting loyalties. In addition, the District argued that the HSC is a managerial employe based upon the position's alignment with management and its budgetary and policy responsibilities described in the HSC position description. With regard to the GTC, the District contended that the position is supervisory due to the GTC's supervisory and evaluative authority over teachers with GT students in their classrooms, and argued that if the GTC position were included in the existing unit, the incumbent would not be able to do the GTC job fully.

In a reply brief, the District urged the Commission to reject the Association's contention that the exclusion of the HSC would lead to the exclusion of many employes, citing the unique nature of the HSC job in the context of needs and past experiences of the District, and the specific qualifications of the incumbent HSC. The District also argued that the GTC's supervisory duties are real and significant, contrary to the Association's assertions, and that the incumbent GTC is the only supervisor of the delivery of GT program.

DISCUSSION:

Gifted and Talented Coordinator

The Commission considers the following factors in determining whether a position is supervisory. Not all of the criteria need be present for a position to be found supervisory. Rather, in each case the inquiry is whether the supervisory criteria described below are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or less authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his or her skills or for his or her supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employes; and
7. The amount of independent judgment exercised in the

supervision of employes. 2/

Concerning the GTC and its incumbent Mary Garber, we conclude that Garber does not perform supervisory duties in sufficient combination or degree to warrant her exclusion as a supervisor. We note that Garber's pay is not commensurate with supervisory status; that her evaluative duties, when performed, will focus on the effectiveness of the Program and not the teacher's performance; that Building Principals and Mrs. Richards (Director of Curriculum/Instruction and Staff Development) possess the primary responsibility and authority to evaluate the day-to-day performance of the teachers; that if a disagreement arose between a teacher and Garber regarding how the GT Program should be delivered, Richards, Garber's supervisor, would make the ultimate decision; that Garber has not effectively recommended the hire, promotion, transfer, discipline or discharge of any teacher and that Garber does not assign or direct teachers, although she does place volunteer teacher mentors with GT students as part of the mentoring portion of the GT Program; and that Garber demonstrate-teaches portions of the GT Program to assist teachers in delivering the program to their GT students. Further, we note that if teacher discipline or discharge were necessary due to faulty delivery of the GT Program by a teacher, the final decision on whether to pursue such actions would be made by the Building Principal and/or Richards, not by Garber.

As Garber is not a supervisory employe, her position has been placed in the Association's unit.

#### Health Services Coordinator

The Commission has held that for an employe to be confidential, the employe must have significant access to, knowledge of, or participation in confidential matters relating to labor relations. Information is confidential when it

1. Deal(s) with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relation and grievance handling between the bargaining representative and the employer; and
2. Is not information which is available to the bargaining representative or its agents. 3/

The District does not assert Hempel has access to confidential labor relations materials, such as grievances, memos, correspondence or other documents relating to bargaining strategies, litigation or budget proposals. Instead, the District focuses on Hempel's role vis-a-vis abused students as the basis for Hempel's confidential status. We note that Hempel has not been approached by any District students or their parents in regard to any of the incidents of alleged physical or sexual abuse. Thus, Hempel has played no role whatsoever in the investigation or discipline of District employes. Compare, Milwaukee County (Sheriff's Department), Dec. No. 22519 (WERC, 4/85). In addition, it appears from the record and from Sec. 48.981(7), Stats., that if Hempel is involved in the future in investigating allegations of abuse, her role would be limited to gathering facts, a function we have previously found insufficient reason for concluding that a position should be excluded as confidential. City of Manitowoc (Police Department), Dec. No. 20696 (WERC, 5/83).

We acknowledge the District's concerns about conflicting loyalties of employes who job responsibilities may place them in a position of taking action which could lead to a co-worker's discipline. However, we note that the District employs Counselors and Social Workers who may deal with allegations of abuse, and that there is no showing that the use of these employes (who are members of the instant bargaining unit) has disrupted the District's ability to respond to abuse cases. Indeed, we note that the Social Worker maintains the District's files on abuse cases.

Thus, we find that Hempel is not a confidential employe within the meaning of MERA. We turn to the District's contention that her position is managerial, an issue which in our view is a closer one.

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/or possess the authority to commit the employer's resources, either by exercising the authority to establish an original budget or by allocating funds for differing program purposes within an original budget. Milwaukee v. WERC, 71 Wis.2d 709

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2/ Town of Conover, Dec. No. 24377-A (WERC, 7/87); See also Sec. 111.70(1)(o)1, Stats.

3/ Appleton Area School District, Dec. No. 22338-B (WERC, 7/87); Menomonee Falls School District, Dec. No. 13492-A (WERC, 10/85); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

(1976);

Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp 1984); Kewaunee County v. WERC, 141 Wis.2d 347 (CtApp 1987).

Participation in the formation, determination and implementation of policy must be ". . . at a relatively high level of responsibility" for such participation to qualify an individual as a managerial employe. Village of Jackson, Dec. No. 25098 (WERC, 1/88), and cases cited therein. See also, Portage County, Dec. No. 6478-C (WERC, 10/87); Town of Conover, Dec. No. 24371-A (WERC, 7/87); Marathon County, Dec. No. 19130-E (WERC, 2/88) at p. 5; Door County (Courthouse), Dec. No. 24016-B (WERC, 8/88), and cases cited therein.

For an employe to be managerial based upon his/her ability to allocate the employer's resources, the employes' activities must significantly affect the nature and direction of the employer's operations. Village of Jackson, supra. If the employe's input into making/drafting an original budget is not merely routine or ministerial, the employe's budgetary involvement will not warrant his/her exclusion as a managerial employe. See, e.g., Village of Jackson, supra; Portage County, supra.

Hempel's job description contains several indices of managerial status. For instance, it assigns her the responsibility of preparing, evaluating and submitting an annual Health Services budget. In the event she actually exercised this apparent authority to establish an original budget, the managerial status of her position would be clear. 4/ However, there is no testimony within the record from which a reasonable inference can be made as to the extent of Hempel's actual budget authority. 5/ Similarly, Hempel's job description also mandates that she develop policies/procedures for emergency services, write guidelines for common school-related illnesses or injuries for first-aid counselors, establish safe environment standards, an accident and illness policy, and a special diet policy. Yet, although employed as the District's Health Services Coordinator since October of 1988, as of the January 29, 1990 hearing date, Hempel had performed no work in connection with these tasks. 6/

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4/ Eau Claire County v. WERC, supra at 354; Kewaunee County v. WERC, supra at 368-9.

5/ Hempel did deny she had authority to commit the Employer's resources by allocating funds for purposes different from an original budget. (Tr. 28) Inasmuch as this can be accomplished only by a 2/3 majority of the School Board (See Sec. 65.90(5), Stats.), Hempel's professed impotence in this area is of no significance. More to the point is whether Hempel has discretion to allocate funds within her departmental budgetary categories (consistent with enumerated budgetary purposes), but as to this there was no evidence offered.

6/ The record suggests apparent confusion on Hempel's part as to her role in recommending policy revisions. She exhibits an awareness that her predecessor had started that procedure, but professes ignorance as to why. (Tr. 44-45) She claimed she was continuing those efforts (Tr. 45), but earlier asserted that the only policy she had formulated was that relating to medications.

It does appear that Hempel drafted a medications policy for the District, consistent with another provisions of her job description. It is a policy which was apparently adopted by the School Board, unaltered. While this represents meaningful participation in policy formulation, 7/ it is the only such instance we can find. As such, it is insufficient, in our view, to confer managerial status on Hempel's position.

We note, moreover, that it does not appear that Hempel was ever told of her investiture with managerial authority. She specifically denied participation in any degree in the formulation, determination or implementation of management policy of the District. While the opinion of an employe as to whether his/her position has managerial status is not determinative of the question, it is impossible to ignore Hempel's unequivocal disavowal of managerial participation on this record.

Dated at Madison, Wisconsin this 1st day of August, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairman

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner

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7/ That Hempel, herself, did not orally present such policy proposal to the Board of Education does not alter our view; that circumstances may simply represent a stylistic preference of the Superintendent, and cannot be deemed as a trustworthy guide to actual managerial authority.