

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :  
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 NORTHLAND PINES EDUCATION ASSOCIATION : Case 32  
 : No. 44686 ME-452  
 : Decision No. 27154  
 Involving Certain Employes of :  
 :  
 NORTHLAND PINES SCHOOL DISTRICT :  
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Appearances:

Mr. Gene Degner, Executive Director, WEAC UniServ Council No. 18,  
 P.O. Box 1400, 719 West Kemp Street, Rhinelander, Wisconsin  
 54501, on behalf of the Northland Pines Education Association.  
Drager, O'Brien, Anderson, Burgy & Garbowicz, Attorneys at Law, Box 639,

Eagle

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

On October 19, 1990, the Northland Pines Education Association, hereinafter the Association, filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify an existing collective bargaining unit represented by the Association. The Association sought in its petition to include the following positions: Director of Alcohol and Other Drug Abuse Program (Student Assistance Program Coordinator), Curriculum/Computer and Grant Coordinator, School Psychologist and Gifted and Talented Coordinator. The Northland Pines School District opposed the inclusion on the bases that the positions are supervisory, managerial or executive, are not within the unit description and that they do not share a community of interest with employes in the bargaining unit. Hearing was held in Eagle River, Wisconsin on January 10, 1991 before Examiner David E. Shaw, a member of the Commission's staff. A stenographic transcript of the hearing was prepared and the parties filed post-hearing briefs in the matter by March 20, 1991. Additional evidence was submitted at the request of the Examiner and was received by November 11, 1991. The Commission, being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. The Northland Pines Education Association, hereinafter the Association, is a labor organization with its offices located c/o WEAC UniServ-Council No. 18, P.O. Box 1400, 719 West Kemp Street, Rhinelander, Wisconsin 54501.

No. 27154

2. The Northland Pines School District, hereinafter the District, is a municipal employer with its offices located at the Eagle Building, 501 West Pine Street, Eagle River, Wisconsin 54521.

3. The Association is the voluntarily recognized exclusive collective bargaining representative of the employes in the bargaining unit and the parties' Collective Bargaining Agreement contains the following:

SECTION II - RECOGNITION OF THE BARGAINING UNIT

The Board recognizes the Northland Pines Education Association as the legally constituted bargaining agent under the provisions of Section 111.70 of the Wisconsin Statutes for all regularly employed classroom teachers, librarians, and guidance counselors, which shall include teachers hired to replace teachers leaving the Northland Pines system permanently, but which shall not include substitute teachers and shall exclude all managerial and supervisory employees, including the position of Athletic Director/Attendance/Discipline Officer unless such positions would include regularly assigned teaching duties.

The positions in question did not exist at the time the bargaining unit described in the parties' Collective Bargaining Agreement, as set forth in Finding of Fact 3, was voluntarily agreed to by the parties.

4. On October 19, 1990 the Association filed a petition with the Wisconsin Employment Relations Commission requesting that the positions of Director of Alcohol and Other Drug Abuse Program (Student Assistance Program Coordinator), Curriculum/Computer and Grant Coordinator, School Psychologist and Gifted and Talented Coordinator, be included in the bargaining unit set forth in Finding of Fact 3, above. The District opposed the inclusion of those positions on the bases that the positions are not within the definition of the bargaining unit, as described in the voluntary recognition provision in the parties' labor agreement, and that the positions are supervisory, managerial or executive in nature and lack a community of interest with the employes in the bargaining unit.

5. The position of Student Assistance Program Coordinator, hereinafter SAP Coordinator, is not currently in the bargaining unit and is a full-time position in the District created approximately five years ago. The position has been filled since that time by Bonnie Lyon. In filling the position the District required that the person have a college degree and experience in education and in the alcohol and drug abuse area, but did not require that the person have a teaching certificate. The position is not mandated by the State's Department of Public Instruction, hereinafter DPI, and there is no state certification required. Lyon has a college degree and a substitute teaching certificate in social studies in Wisconsin and a lifetime teaching certificate in Illinois. Prior to holding the SAP Coordinator position, Lyon was employed by Vilas County in Juvenile Intake for five years and prior to that was a substitute teacher in Wisconsin and taught secondary level social studies in Illinois.

Lyon is issued an individual employment contract using the District's individual teacher contract format which refers to the Master Agreement. For the 1990-91 school year Lyon was paid a salary of \$21,096.00 for 200 days on what is considered an "extended contract." Lyon negotiates with the District Administrator, Peterson, for her salary. Lyon receives the same fringe benefits received by the teachers and administrators in the District and has

the same work hours as the teachers, but may be required to work evenings when the need arises and will then come to work a little later the next morning. Lyon has her own office located at the High School and travels to all six schools in the District in the course of her duties. Lyon travels to the District school buildings and to outside agencies and although she tries to let one of the secretaries know where she will be, Lyon is not required to obtain Peterson's approval for such travel. There is no written job description for the position of SAP Coordinator.

Lyon's duties and responsibilities as SAP Coordinator are to administer the District's Student Assistance Program, and in doing so Lyon has spent approximately 60% of her time in intervention and the rest in prevention. Approximately half the time spent on intervention is with students. The District's Alcohol and Other Drug Abuse (AODA) curriculum was purchased by the District after Lyon reviewed several that were available and made a recommendation to Peterson and to the District's Board of Education, hereinafter the Board, which recommendation was approved. As part of her duties Lyon presents a two-day in-service prior to the start of the school year for those teachers who will be teaching the AODA curriculum. Attendance at that in-service is encouraged, but is not required since it occurs outside the school year. Lyon is responsible for evaluating the AODA curriculum and for seeing that it is presented properly. In carrying out that responsibility, Lyon talks to individual teachers and the school principals and attends faculty meetings. Lyon does not teach the AODA curriculum herself and has no classroom or teaching duties. Approximately three times per year Lyon attends Board meetings to update the Board on how the program is working. Lyon also speaks at outside meetings as to the District's Student Assistance Program. As part of her intervention responsibilities Lyon co-facilitates student support groups with another member of the "core team" made up of volunteers from the District's various employes, including teachers, secretaries, bus drivers, etc. There are six to twelve support groups going at any one time and they meet approximately one hour per week in the District's schools. The "core team" members receive approximately four days of training and those who act as co-facilitators with Lyon have received three to five days of additional training in that regard.

Lyon selects who among the volunteers will be co-facilitators and coordinates the volunteers in the SAP. Lyon does not formally evaluate the volunteers but does decide who will be on the "core team" and who will help facilitate the support groups, and has the authority to reject volunteers or to terminate their participation in the program. If a volunteer desires to attend outside training, he/she first goes to Lyon for her approval and then make the request to their principal or Peterson, who have the final say on whether they may attend the training. Also as part of her intervention responsibilities, Lyon does assessments of students who have been referred to her as possibly having a drug or alcohol problem in order to determine if they have such a problem. If Lyon decides the student has a problem, she will refer the student to an outside agency for treatment and acts as the District's liaison with outside agencies such as the Vilas County Department of Social Services, Juvenile Intake, Vilas County Sheriff's Department and the Lakeland Council on Alcohol and Other Drugs.

As SAP Coordinator, Lyon is chair of the District's Student Assistance Steering Committee. That committee developed the policy with regard to the AODA and student assistance program adopted by the Board. As chair of that committee, Lyon has input in the formulation of SAP policy and is primarily responsible for implementing that policy. Since the SAP Coordinator position was created and the SAP program was started in the District the program has had an annual budget of \$3000.00 in local money, which was set by the Board when the program began, and also has money from various grants from federal, state

and local governments. Lyon and Mary Burchby, the person responsible for writing grant requests, share responsibility for writing grant requests for the Student Assistance Program. Lyon submits the budget for the SAP to Peterson and it is then submitted to the Board for final approval. Lyon has some discretion in how the \$3,000.00 local money is to be spent pursuant to the budget she submits, and uses most of it to supplement programs that are partially funded by grants and for training. Monies received through grants must be spent on a specific goal that was outlined in the grant request. In spending the monies from the budget, Lyon submits a purchase order to the District's Business Office. If money in the local budget runs out, or Lyon desires additional money to fund an unbudgeted project, Lyon goes to the Board to request additional money, and before doing so first goes to Peterson. In instances where employes or community members attend outside training and incur out-of-pocket expenses, those expenses are submitted to the Business Office by the individual and the Business Manager generally calls Lyon to okay the reimbursement and it then comes out of the local money budget.

Lyon has no responsibility for evaluating District employes other than as to the volunteers for the core team and support groups facilitation. Lyon does not have her own secretary, but does have the authority to have one of the secretaries work overtime to provide secretarial services for her. Lyon also has the authority to contract with an individual to provide her with secretarial services outside the school year, i.e., for a week or two beyond the end of the school year or prior to its start. Such an arrangement is based on a verbal agreement with the individual who is paid an hourly rate only for the work. The individual is paid by the District and the money comes out of the SAP budget. Lyon has the authority to terminate the arrangement with the individual if she deems the work unsatisfactory. Lyon has no responsibilities with regard to hiring, firing or disciplining employes of the District. Lyon does not usually attend administrative team meetings and has no responsibilities with regard to labor relations or personnel matters in the District. While Lyon's work with individual students in the SAP is confidential, she is not privy to confidential labor relations or personnel matters and does not have access to personnel records of other employes.

6. The position of District-Wide Curriculum/Computer/Grant Coordinator is currently not in the bargaining unit and is a full-time position consisting of three areas of responsibilities. The incumbent in the position is Mary Burchby. The current position's job description was drafted January 4, 1991 and reads as follows:

District-Wide Curriculum/Computer/Grant Coordinator  
Northland Pines School District

District-Wide Curriculum Coordinator:

1. To establish a comprehensive plan for curriculum development within the District.
2. To develop and implement district-wide process for curriculum assessment with emphasis on the identification of areas of strengths and weaknesses.
3. To adopt and monitor a coordinated plan for textbook adoption procedures within the district.
4. To create and implement organizational

structure which will provide for coordination among district-wide programs, content areas and grade levels.

5. To supervise district involvement and participation of administration, staff, students and community in the development of curricular adjustments and innovations.
6. To integrate appropriate curriculum changes, based on research and analysis, into the present curriculum.
7. To administer the planning process by which the curriculum budgetary needs are identified, prioritized and provided for within the district budget.
8. To coordinate and direct curriculum evaluation system that is broadly based, involving administration, staff, students and community.
9. To analyze and utilize evaluation results in needs assessment, development and implementation of improvements to instructional programs.
10. To establish and coordinate a comprehensive network of communication with the community, other school systems, state and federal education agencies and institutions of higher learning.

District-Wide Computer Coordinator:

1. To establish and direct process of district-wide integration of computer technology.
2. To supervise the creation and maintenance of comprehensive inventory of all computer hardware and software currently within the district.
3. To design and implement district-wide software evaluation procedures.
4. To identify and make recommendations as to the optimum use of district resources (budgetary and otherwise) in computer implementation.
5. To oversee the integration of the computer as an instruction tool within instructional areas.
6. To recommend establishment of additional class offerings in order to strengthen district-wide computer literacy.

7. To develop and direct in-service sessions for staff, students and parents to expand knowledge base.
8. To conduct staff, student and parent surveys and recommend improvements based on information obtained.
9. To provide additional outside resources to facilitate professional growth of district staff.
10. To increase community awareness of advances in technology within the district through utilization of the media and communication with area organizations.

District-Wide Grant Coordinator:

1. To establish and maintain communication with key district personnel in order to facilitate identification of areas of critical funding need.
2. To research availability of funding sources for district-wide programs.
3. To investigate establishment of corporate and private funding sources to supplement current programs and facilitate adoption of new programs for the district.
4. To design and complete funding proposals responsive to district needs, maintaining adherence to all requirements, restrictions and deadlines.
5. To oversee application for all federal and state funding proposals.
6. To supervise and coordinate all funding proposals developed within the district.
7. To administrate the reception processing and inventory of all grant items received by the district.
8. To supervise the completion and maintenance of appropriate funding expenditure records and documents.
9. To direct the completion of all reports to funding agencies regarding expenditures, inventories and progress evaluations.
10. To serve as liaison between district and other area agencies which may participate jointly in grant programs.

7. The position held by Burchby has changed over the years. Having been laid off by the District previously, Burchby was rehired in 1985 on a full-time basis as the Athletic Director and Grant Coordinator for the District and for a period of time was also Dean of Student Activities responsible for discipline and attendance at the high school. The Curriculum Coordinator position had been vacant since 1978. Burchby was assigned the Curriculum Coordinator responsibilities for the District beginning in the 1989-90 school year and was assigned the Computer Coordinator responsibilities beginning in the 1990-91 school year and relieved of Athletic Director responsibilities.

Burchby was issued an individual employment contract for the 1990-91 school year for the position of Curriculum Coordinator/Athletic Director/Grant Writer, which position was altered as previously described. The individual contract set forth a salary of \$40,000.00 for the "teacher contract year plus such extra time as deemed necessary" by Burchby to satisfactorily complete her responsibilities. That amount exceeds the top salary listed in the salary grid for 1990-91 contained in the parties' Collective Bargaining Agreement. Said

contract also set forth that Burchby will be permitted to attend professional meetings for people in similar positions and have her expenses paid, that she will be paid mileage for use of her personal car in her work at the same rate paid to other District employees, and set forth the following with regard to fringe benefits:

In addition to the contract salary and other benefits stated heretofore, the Board of Education will provide the following:

1. Personal, bereavement, sick, professional, sabbatical, and maternity leave to be as provided for the teaching staff with the exception that stated limits may be extended at the discretion of, and with the approval of, the District Administrator.
2. Life insurance and long term disability insurance coverage shall be supplied by the Board on the basis of earnings and employee salary.
3. The policy allowing Board payment of retirement costs shall be continued for all principals.
4. Items mutually agreed upon may be changed only after discussion between the two parties, except in the case of non-renewal.
5. Health and accident insurance as in Teacher Master Agreement.

The benefits stated and the format of Burchby's individual employment contract are the same as the benefits provided to the principals in the District and the same contract format as is used for the principals. Burchby negotiated directly with Peterson regarding her salary and hours. Burchby has her own office located in the High School offices. Burchby's work hours are 8:00 a.m. - 3:30 p.m. and whatever additional hours are necessary to complete her work. Burchby reports directly to Peterson and any requests for leave time or to attend conferences are made to Peterson. When Burchby was hired in 1985 as the Athletic Director and Grant Writer for the District she was required to have a college degree and a teaching certificate. To assume the curriculum and computer coordinator responsibilities she was in addition required to have a strong background in curriculum, strong writing and verbal skills and a knowledge of the different subject areas. The positions are not mandated by the DPI and the latter has no certification requirements for the positions. Burchby's work is at times concentrated in one of the three areas for which she is responsible.

As Grant Coordinator, Burchby is ultimately responsible for obtaining and evaluating all of the grants in the District. Burchby first assesses the needs of the District, then seeks out sources of grants that would fit those needs, writes the applications for the grants, and makes sure the District meets grant requirements, monitors and administers the grant and the use of the monies from the grant to make sure grant requirements are being met and to ensure the money is spent in accord with the purposes specified in the grant, evaluates the effectiveness of the grant, and fills out the reports to the entities that made



the various grants. Where the grant deals with a specific department, such as the AODA program, Burchby will work with the department head in writing the grant application. The grants include three to four federal entitlement programs, five or six major federal and state grants, and several smaller grants where Burchby works with an individual teacher or student organization to apply for the grant. Burchby is responsible for approximately \$150,000.00 per year in grant monies, not including the Title I money received from the federal government. In some cases the administrative staff and the department head will decide how the money is to be spent. In assessing needs Burchby receives input from principals, teachers and department heads. If a teacher requests to attend outside training that is to be paid by grant money, Burchby initials the request in addition to the required signature of the teacher's principal.

Burchby's responsibilities as Curriculum Coordinator for the District involve assessing the curriculum, and developing a plan to meet the District's needs with regard to curriculum, implementing programs to meet those needs and coordinating a systematic ongoing evaluation of those programs to determine whether the needs are being met. Burchby is also the District's liaison with the community, other school districts and with state educational institutions with regard to curriculum. Burchby is responsible for ensuring that the District is meeting state mandates from DPI with regard to curriculum. Burchby is also responsible for developing textbook adoption procedures to recommend to the Board and to make recommendations with regard to the purchase of text books.

As Computer Coordinator for the District, Burchby is responsible for developing a plan with regard to developing classes about the computer and how to use it and planning the use of the computer as an instructional tool in other classes. She is also responsible for determining the best computer software and hardware to purchase and how much, and then makes a recommendation to the Board for its approval. Burchby also makes recommendations to Peterson and the Business Manager regarding service contracts for the computers. Such recommendations have been followed by the Board. Burchby also monitors those contracts to ensure the District's receiving the service for which it contracted.

Burchby has no classroom duties or student contact responsibilities. Burchby reports directly to Peterson. Since assuming the Curriculum Coordinator responsibilities, Burchby attends all Board meetings to report on the curriculum and the computers. Burchby also attends all administrative staff meetings along with Peterson, the principals and the Director of Special Education.

Burchby's budget involvement consists of making recommendations with regard to the computer budget and facets of the budget that concern curriculum.

Burchby has significant input into District policy with regard to curriculum and the District's computer program in her position.

Burchby has her own secretary who is responsible to Burchby and to the High School Principal. Burchby's secretary also is responsible for handling money at the High School. Burchby has the authority to have her secretary work overtime when needed. The secretary would first ask Burchby about taking leave time off, but is required to obtain the principal's approval and signature on the leave request form. Burchby evaluates her secretary's work performance and was involved, along with the High School Principal, in interviewing applicants for the position and developed the test to be used in the hiring process for the position. Burchby made her hiring recommendations to the principal and discussed it with him and they then made a joint recommendation to Peterson, which then went to the Board. Burchby has no direct responsibility for other employees other than her secretary and has never reprimanded an employe. If

Burchby felt a teacher was not following the curriculum, she would speak to the teacher, but would work through the teacher's principal if the problem was not resolved at that point.

The teaching staff and support staff in a building generally report directly to the building principal and requests for leave time, requests to attend conferences, etc. and discipline of those employees is initially handled by the principal. Burchby may be consulted by a principal as to whether a conference a teacher has requested to attend fits within the District's objectives for curriculum, but the final decision on whether the request is granted rests with the principal. Burchby has never been involved in a grievance since being hired in 1985, and no grievance has been filed since that time in her areas of responsibility. Burchby has had no involvement in negotiations in her present position, but did have some input when she had Athletic Director responsibilities. There have been no negotiations held since Burchby assumed Curriculum Coordinator responsibilities as the District and Association are parties to a 1989-92 Collective Bargaining Agreement. Matters pertaining to negotiations with the District's organized employees are at times discussed at administrative staff meetings and Burchby would be present at those meetings. Burchby has input with regard to making recommendations as to whether programs should be dropped from or added to the curriculum, which recommendations might include adding or decreasing positions in those areas. At the time of hearing, said recommendations have only been to add programs. Burchby does not have access to the personnel files of other employees.

8. The position of School Psychologist is not currently included in the bargaining unit and the incumbent in the position is Keith Lodholz. The 1990-91 school year is the first year the District has employed its own school psychologist and previously contracted for that service from CESA No. 9. Prior to being directly employed by the District Lodholz was employed by CESA No. 9 and under that contract provided services to the District and to the Tomahawk and Phelps school districts. The District has a cooperative agreement with the Phelps School District pursuant to Sec. 66.30, Stats., with regard to the School Psychologist and Lodholz also provides services to the Phelps School District under that agreement.

Lodholz was issued an individual employment contract that utilized the individual teaching contract format and which provides that Lodholz is to be paid a salary of \$41,933.00 for his services and his is a 200-day contract. Lodholz negotiated with Peterson with regard to his salary, and Peterson wanted to arrive at a figure that exceeded the maximum on the teacher's salary grid since Lodholz has a Master's Degree plus 32 credits. Lodholz has a license to practice school psychology and state and national certification at Level II in that area and does not have a license or certification to teach. As School Psychologist, Lodholz receives the same fringe benefits as the teachers and principals and his work hours are 8:00 a.m. - 3:30 p.m. and whatever additional hours are needed to do his job. Lodholz has an office at the Middle School. Lodholz does not need to check with anyone as to where he will be during the workday, but does obtain Peterson's permission before attending conferences away from the District.

There is no job description for the School Psychologist. In a routine day, Lodholz spends two to three hours evaluating students and one to two hours in parent consultations, consults with classroom teachers and with the Special Education teacher, meets and consults with community and state agencies, chairs M-Teams and IEP (Individual Education Plan) meetings, writes up reports and recommendations, and writes up M-Team evaluations and IEP's. The M-Team meetings are set up by the Director of Special Education, Sam Mule, and involve Lodholz, the student's classroom teacher(s), the Special Education teacher, the parents or guardian of the student and, depending on the nature of the

student's handicap, people from an outside agency or institution. When Lodholz is involved in an M-Team meeting, he usually chairs that meeting. As chair of the M-Team, Lodholz is responsible for coordinating the presentation of information and then putting it all together at the end for diagnostic purposes or recommendations, but those recommendations are reached collectively. IEP meetings are also set up by Mule, and Lodholz is involved in approximately 95% of those meetings and at times chairs those meetings as the administrative representative.

State interpretation of federal law requires that there be an administrative representative present at IEP meetings and that person will either be Lodholz, a building principal or Mule. Mule has final responsibility for signing the IEP. Either Mule or the principal designate who will be the administrative representative for an IEP. Other than being the administrative representative on M-Teams and at IEP meetings and being responsible for the School Psychology department budget, Lodholz's responsibilities with the District are the same as when he was employed through CESA No. 9. The Director of Special Education in the District, Mule, is employed through CESA No. 9 and Lodholz is responsible to him with regard to the M-Teams and to the building principal with regard to IEP's for "exceptional educational needs" (EEN) students who have been referred.

Lodholz is directly responsible to Peterson and the Board. Lodholz will be responsible for the School Psychology Department budget which will cover his convention attendance, travel, office supplies, testing materials, etc., and will work with Peterson and the District's Business Manager in that regard. Lodholz has not disciplined any employe and his input in the hiring process is limited to being part of an IEP where an additional aide is recommended for the student or the teacher. That recommendation then goes to the administrative team and Lodholz's input has to do with the number and type of individual that will be needed and not the specific individual that should be hired. Lodholz's recommendation in that regard is usually made informally to Mule who then makes the recommendation to the administrative team.

The District recently instituted the Dubuque Management System and Lodholz and Mule discussed the number of people it would be necessary to hire to make it work. Mule then took it to the administrative team and he and the Elementary Principal, Gene Olson, then made the formal presentation to the Board and Lodholz was not present. Lodholz does not regularly attend Board meetings and would attend only when the Board requests him to come, and does not attend administrative team meetings unless an issue arises in his area. Lodholz has not been involved in discussing any grievances that have arisen since he has been employed by the District and no grievances have arisen in his area since he came. Lodholz shares a secretary with Mule who has his office located across the hall from Lodholz's at the Middle School. The secretary is located in Mule's office and makes requests for time off to Mule. Lodholz has the authority to have the secretary work overtime to complete his paperwork. Lodholz does not evaluate teachers, nor their effectiveness in a program he may be evaluating. Lodholz does not have access to the personnel files of other District employes.

With regard to his budget responsibilities, at time of hearing Lodholz was working with a budget that had been set prior to his being hired. In preparing a budget, Lodholz will present it directly to Peterson who will then present it to the Board as part of the District budget. In purchasing a piece of equipment that is not budgeted, Lodholz turns in a purchase order to Peterson who approves it and, if approved, gives it to the Business Manager who makes the purchase. Where items are already in the budget, such as attendance at conferences, Lodholz obtains Peterson's permission to be gone to attend the conference, but does not need his permission to spend the money for the

conference.

9. The position of Gifted and Talented Coordinator (GTC) is currently filled by Gretchen Yagow, who is three-quarters time employed by the District as a Chapter I teacher and one-quarter time as the GTC. The position was created approximately six years ago when a retired teacher volunteered to start a program at the Middle School for gifted and talented students. That person was subsequently given a contract for the position and was eventually replaced by another teacher in the District as a half-time position. That person taught half-time as well and was paid in accord with the salary grid in the Agreement covering the teachers. The GTC position was posted in 1990 and Yagow assumed the position in December of 1990.

The District requires that the person in the GTC position have a teaching certificate or degree, but DPI does not require certification for the position.

The Gifted and Talented Program is mandated by DPI. Yagow's individual employment contract for the GTC position is for the 1990-91 school year for a salary of \$4,953.00 and uses the individual teacher contract format. The salary is based on the salary grid in the Collective Bargaining Agreement of the District and the Association.

There is no written job description for the GTC position. Yagow's duties as GTC are to set up a Gifted and Talented Program in the elementary schools, test students who are referred to the program by their teachers, parents or selves, obtain volunteer mentors from among the teachers at the schools and coordinate the program.

Yagow will report directly to Peterson with regard to her GTC responsibilities. Yagow will have no responsibility with regard to the hiring of teachers and at time of hearing did not have a secretary assigned to her. Yagow will be responsible for preparing a budget for the Gifted and Talented Program which will be submitted directly to Peterson who will then submit it to the Board. The GTC does not attend Board meetings on a regular basis and does not regularly attend administrative team meetings.

10. The employees in the bargaining unit are contracted for 190 days per school year. Each teacher in the District is responsible for submitting a list of supplies for their room within a budgeted dollar limit, with items prioritized, and this is submitted to the building principal where the individual teacher is located and is included as part of the budget for that school. The budget for that school is then submitted to Peterson. Teachers are at times asked to appear at Board meetings to explain programs in which they are involved. Teachers report directly to the principal of the building in which they teach, and are required to be at school from 8:00 a.m. - 3:30 p.m. each school day. The teachers' salaries are based on the salary grid contained in the parties' Collective Bargaining Agreement. The names of the incumbents in the positions in question are included on the seniority list of the instructional staff generated by the District.

11. The occupant of the Student Assistance Program Coordinator position, Bonnie Lyon, does not participate sufficiently in the formulation, determination and implementation of management policy or exercise sufficient control over the resources of the District to be a managerial or executive employe. Lyon shares a sufficient community of interest with the District's teaching staff, librarians and counselors so as to be appropriately included in the bargaining unit with such employes.

12. The occupant of the position of the Curriculum/Computer/Grant Coordinator, Mary Burchby, participates sufficiently in the formulation, determination and implementation of management policy at a level to be a

managerial employe.

13. The occupant of the School Psychologist position, Keith Lodholz, does not exercise supervisory responsibilities in sufficient combination or degree to make him a supervisory employe. Lodholz does not participate sufficiently in formulation, determination and implementation of management policy, or exercise sufficient control over District resources so as to be a managerial or executive employe. Lodholz shares a sufficient community of interest with the District's teaching staff, librarians and counselors so as to be appropriately included in the bargaining unit with such employes.

14. The occupant of the Gifted and Talented Coordinator position, Gretchen Yagow, does not exercise supervisory responsibilities in sufficient combination or degree to make her a supervisory employe. Yagow does not participate sufficiently in the formulation, determination and implementation of management policy or exercise sufficient control over District resources so as to be a managerial or executive employe. Yagow shares a sufficient community of interest with the District's teaching staff, librarians and guidance counselors so as to be appropriately included in the bargaining unit with such employes.

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

#### CONCLUSIONS OF LAW

1. The occupant of the Student Assistance Program Coordinator position, Bonnie Lyon, is not a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats., and is not a managerial or executive 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.

2. The occupant of the Curriculum/Computer/Grant Coordinator position, Mary Burchby, is a managerial employe within the meaning of the Municipal Employment Relations Act, and, therefore, is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. The occupant of the School Psychologist position, Keith Lodholz, is not a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats., and is not a managerial or executive 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.

4. The occupant of the Gifted and Talented Coordinator position, Gretchen Yagow, is not a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats., and is not a managerial or executive 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.

5. The occupants of the positions of Student Assistance Program Coordinator, School Psychologist, and Gifted and Talented Coordinator share a sufficient community of interest with the District's teaching staff, librarians and guidance counselors so as to be appropriately included in the bargaining unit with such employes. Exclusion of these municipal employes from the existing bargaining unit would also unduly fragment the District's professional work force.

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

The bargaining unit described in Finding of Fact 3 is hereby clarified to exclude the position of Curriculum/Computer/Grants Coordinator and to include the positions of Student Assistance Program Coordinator, School Psychologist, and Gifted and Talented Coordinator.

Given under our hands and seal at the City of  
Madison, Wisconsin this 7th day of February,  
1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/  
Herman Torosian, Commissioner

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

I concur in part and dissent in part.

A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

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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.

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.

(Footnote 1/ continues on page 16.)

(Footnote 1/ continued from page 15.)

(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.

NORTHLAND PINES SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The Association

The Association requests that the Commission clarify the existing collective bargaining unit so as to include the positions of Student Assistance Program Coordinator, Curriculum/Computer/Grant Coordinator, School Psychologist and the Gifted and Talented Program Coordinator (one-quarter time). The Association asserts that the positions have been created after the Collective Bargaining Agreement and the recognition provisions were negotiated and, therefore, are appropriate for consideration in a unit clarification proceeding. The Association takes the position that these positions share a community of interest with the other members of the bargaining unit represented by the Association. It cites numerous Commission decisions as holding that, in furtherance of the statutory anti-fragmentation policy, professionals whether certified as teachers or not, should be included in bargaining units of teachers if they share a "community of interest" with teaching professionals in working with students and teachers in furtherance of the total educational program. The Association goes on to cite Commission cases defining managerial employees and asserts that the positions in question do not meet that definition. Citing, City of Milwaukee, Dec. No. 12035-A and Augusta School District, Dec. No. 17944 (WERC, 7/80). In Village of Brown Deer (Public Safety), Dec. No. 19342 (WERC, 1/82) the Commission held that managerial status must be demonstrated and the evidence in this case does not demonstrate managerial status on the part of any of the four positions in question with possibly only a de minimis amount for the Curriculum/Computer/Grant Coordinator. All four of the incumbents in the positions are listed on the teacher seniority list and with the exception of the Curriculum/Computer/Grant Coordinator, all of their individual contracts refer to the conditions granted to teachers in the collective bargaining unit. The only distinction is that they have an extended contract with pro rata pay for the extra days, but there is nothing in those contracts to provide that those employees are managerial or supervisory.

With regard to the Curriculum/Computer/Grant Coordinator, the Association asserts that a review of the job description for the three functions in that position indicates that the supervision is of programs and not of other members of the bargaining unit. There is nothing in the description that allows the individual the discretion to reallocate any of the resources other than to run a check to make sure that funds are spent as allocated in the grant. While there is a limited amount of supervision of staff in the Curriculum Coordinator function, there is more participation with staff, students and the community in the development of curricular adjustments and innovations.

The Association contends that all of the individuals in the four positions indicated they have not been involved in the formulation and management of policies up to the present time. The potential role in the formulation of management policies is to be disregarded. Citing, City of Milwaukee, Dec. No. 16483 (WERC, 8/78). They provided no testimony with regard to management decisions or formulation of policy that had taken place by them and their testimony clearly reveals that such managerial powers they might possess are clearly ministerial in nature.

The Association asserts that the major role of the School Psychologist is to evaluate students. While he may participate in M-Team and IEP meetings, the



responsibility for those meetings lies with the Director of Special Education, and the School Psychologist reports to him. Further, the School Psychologist does not meet routinely with the administrative team and has no responsibility for any other employes. He is expected to primarily keep the same hours as the teachers and any rights he has as to attending meetings, conventions or taking time off, he receives from the District Administrator, Peterson. He has no further authority to spend money other than as it is approved by the District's Business Manager. While the School Psychologist testified that a teaching degree is not required for the position, his individual contract with the District does require a teaching degree and to be a certified teacher. Further, other terms for the employment of the School Psychologist are only speculative in nature as it is a relatively new position within the District.

As to the Student Assistance Program Coordinator, the Association asserts that it also is not part of the management or supervisory team in the District. The position has basically two components, prevention and intervention. The SAP Coordinator testified that she spends 60-70% of her time in intervention and the remainder in prevention. Of the time spent in intervention, approximately 50% of that is with students. The other parts of the job are to act as a coordinator for the related programs within the District and to coordinate the work of volunteers who run support groups for the students. The budget for her position was set at the inception of the program and has not been changed. She has the responsibility to spend approximately \$3,000 in local money; however it must be approved through a voucher system. She testified that she has no responsibility for the supervision of other employes, that she is not involved in the disciplining of other employes and has never been involved in the formulation of bargaining proposals or involved in management strategy sessions with regard to bargaining. Her basic budget consists of grants that are received by the District and that money is spent in accordance with the respective grant. Her hours are similar to those of other teachers and although she may have some flexibility as to her hours, she does not receive compensatory time. Also, the individual contract signed by that individual requires that she have a teaching degree in the State of Wisconsin.

Again, with regard to the Curriculum/Computer/Grant Coordinator, the Association asserts that testimony indicated that she has not been involved in the negotiations process and has not been involved in any kind of reprimand or discipline of other employes. Her managerial time is ministerial since it involves verifying that money received under a grant is utilized by the District in a manner consistent with what the grant provides. Her supervisory responsibility is limited to assuring that teachers' requests for money or training under a grant are really being used for that purpose. She has no authority to grant the teachers leave time or to allocate the money other than to establish that it was used for the purposes required under the grant or that the request is for purposes allocated under the grant. She oversees the coordination, development and implementation of the curriculum; however, she does not supervise to see that the curriculum is indeed being implemented in the individual classrooms. Similarly, with regard to her computer coordinator duties, she has no authority over the computer teacher or any other staff member.

The Gifted and Talented Program Coordinator is a new position that was revitalized from an old position in the District. The Gifted and Talented program is a DPI-mandated program and the services are provided by a certified full-time teacher in the District who teaches 3/4 time as a Title I teacher and 1/4 time as the Gifted and Talented Program Coordinator. The record is clear that this individual has no managerial or supervisory responsibility. She has the responsibility to coordinate teacher volunteers who are willing to provide services to gifted students after school hours. She is paid in accord with the salary schedule in the Collective Bargaining Agreement covering the teachers

and a teaching certificate is required for the position.

#### The District

The District takes the position that none of the positions in question should be included in the bargaining unit represented by the Association. It asserts that this bargaining unit is voluntarily recognized and that the parties' Collective Bargaining Agreement, in the Recognition Clause, defines the bargaining unit as "classroom teachers, librarians and guidance counselors." The positions in question do not fall within that definition of the bargaining unit.

The District also alleges that the positions do not fall within the definition of a municipal employe as defined in Section 111.70(1)(i), Stats., in that all of them are supervisory, managerial or executive positions.

The District cites Arrowhead United Teachers v. WERC, 116 Wis. 2d 580 (1984) as a lead case by the Wisconsin Supreme Court dealing with unit clarifications. The District asserts that the Court addressed the concept of "community of interest" and set forth seven factors to be considered in making that determination:

1. Whether the employees in the unit sought share a 'community of interest' distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours, and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common work place with the employees in said desired unit or whether they share a work place with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. City of Franklin, WERC Dec. No. 18208 (November 4, 1980); Wisconsin Heights School District, WERC Dec. No. 17182 (August 7, 1979); Kenosha Unified School District No. 1, WERC Dec. No. 13431 (March 11, 1975)."

The District also cites the definition of a supervisor as set forth in Section 111.70(1)(o)1, Stats. and following the two-part test for determining a managerial employe as described by the Court of Appeals in Kewaunee County v. WERC, 141 Wis. 2d 347 (1987):

"Under the first test, a court determines whether the employee participates in the formulation, determination, and implementation of management policy...

Under the second test, a court determines whether the employee possesses effective authority to commit the employer's resources. Id. This authority is defined as the power to establish an original budget or to allocate funds for differing program purposes under such a budget." (At 353)

With regard to the School Psychologist, the District asserts that he is not required to hold a teaching license. He chairs most of the M-Team evaluations and conducts most of the IEP's as the administration representative, and is directly responsible to Peterson and the Board, rather than a building principal. Further, Lodholz testified he feels he is part of the administration team and is in essence a Department of School Psychology, and that if he had a more formal department he would perform supervisory duties. He is responsible for formulating his own budget for the department and submits it directly to Peterson. He further testified that he did not feel he would be represented by the Association. Lodholz also testified that he has the authority to, and routinely does, require a secretary to stay late to complete his work. The District applies the seven factors of Arrowhead, supra., and concludes the following with regard to the School Psychologist:

1. He has no community of interest with the teachers.
2. His duties and skills are not the same as those in the bargaining unit and, in fact, he is not even required to be certified as a teacher.
3. He negotiated his wages independently, is not required to keep the same hours, has a contract for a different period of time, and works under substantially different working conditions.
4. Teachers in the bargaining unit are supervised by their principals. Mr. Lodholz is directly responsible to Mr. Peterson (Board Exhibit #10)
5. Although he shares the workplace with the other employees, it is not necessary. The actual place of his office would not affect his role or function in any way. (page 32)
6. Sharing no community of interest with the teachers, it is clear that not including the School Psychologist will not result in undue fragmentation of the unit.
7. Historically, neither here at Northland Pines nor at CESA, has the school psychologist been part of the bargaining unit.

With regard to the Student Assistance Program (SAP) Coordinator, the District asserts that the individual in the position, Lyon, is primarily

involved in alcohol and other drug abuse programs, with the job being divided into two primary areas, prevention and intervention. She in-services other teachers with regard to this area, facilitates core teams, has the authority to request and send members of the core team for training, and can remove persons from the core team. Lyon makes the decisions as to how grants she receives are to be spent and is totally responsible for the working budget and for spending the local money part of her funding for her department. She is solely responsible for the staff training allowed by her grant money. Lyon has very flexible work time, unlike the teachers, and is contracted for 200 days per year, again unlike the teachers. Her position is not certifiable and she is required only to have a college degree, and not a teacher license. Lyon has the authority to hire extended secretarial services after the end of the school year and before the school years starts. Thus, she has the authority to commit District resources in that regard. She meets with the Board approximately three times per year to report progress in her area and considers herself independent from the bargaining unit. She reports directly to Peterson and is the District's representative with outside agencies she deals with in her job. She has implemented curriculum in the District and supervises the teachers in that curriculum. She has her own office and considers herself to be part of management rather than the bargaining unit. Applying the factors of Arrowhead, the District concludes the following as to the SAP Coordinator:

1. Inservicing teachers, developing curriculum and programs, implementing the programs, and supervising teachers shows there is no community of interest with the teachers.
2. The duties and skills of this position, working in alcohol and drug programs and working with emotional difficulties, are completely separate from the duties and skills of the teachers.
3. There is no similarity of wages, hours or working conditions. She negotiates her wages separately, works different hours and comes and goes under totally different conditions.
4. Teachers are supervised by the principals. This position is supervised directly by the Administrator and reports to the Board.
5. Although she has a common workplace, being in the high school, she has a separate office and its location is not important to the job.
6. Being so dissimilar there is no undue fragmentation by holding this position distinct.
7. This position has existed for five (5) years. Historically it has never been part of the bargaining unit.

Regarding the Curriculum/Computer/Grant Coordinator, Burchby, the District first notes her duties in all three areas. As Grant Coordinator, she locates grants, works up applications, writes the programs, spends the money received from the grant, evaluates the programs, and makes the reports to the granting agency and the Board. It is her responsibility to make sure the money from the grants are spent in the manner set forth in the applications. She also approves training taken pursuant to grants. As Curriculum Coordinator, Burchby assesses the curriculum and develops a plan to meet the District's

needs. She implements programs and coordinates a systematic review of the programs, being responsible for assuring that the District complies with the state mandates having to do with curriculum. In that regard she works with other members of the administration team. As Computer Coordinator, she determines which computers to purchase and how much will be spent for them and makes the recommendations directly to the Board. She also makes recommendations to the Board for the large purchases of textbooks.

Burchby attends all administrative staff meetings and has meaningful input in those meetings. She also attends each Board meeting and reports to the Board regarding curriculum and computers and has meaningful input into the Board process in those areas. Burchby has a full-time secretary who is responsible to her and she was involved in the hiring process of that secretary. The secretary first checks with Burchby regarding taking time off and then with the High School Principal. Burchby has the authority to have the secretary work overtime. Burchby negotiated her own contract which is for a full year, has flexible working time, unlike the teachers, and is directly responsible to Peterson. Burchby is not a licensed teacher and has no teaching duties or responsibilities. Burchby is responsible for ensuring that the computer instruction is properly implemented and in that regard she supervises and evaluates teachers. In applying the seven factors of Arrowhead, supra., the District concludes the following with regard to the Curriculum/Computer/Grant Coordinator position:

1. There is no community of interest with the teacher employees.
2. The duties and skills are in no way comparable to those required of teachers.
3. The position calls for different wages, different hours, and totally different working conditions.
4. This position is supervised directly by the Administrator. Teachers are supervised by the principal.
5. Although her office is located in the high school, that is only because there is no room anywhere else. She accomplishes a great deal of her work in the other buildings, at the administration office, and in meetings with various agencies throughout the District.
6. Exclusion of this position would not result in undue fragmentation.
7. Historically, this position has never been a bargaining unit position.

With regard to the Gifted and Talented Coordinator, the District asserts that the Association has offered little or no evidence in support of its petition to include the position in the bargaining unit. The Association's two witnesses both testified that they knew little or nothing about the position or the program. Conversely, Peterson testified that the position has never been part of the bargaining unit and that there are no DPI requirements for the position. He also testified that if and when the program gets up and running the individual will have supervisory duties over the program and over the mentors and will have a secretary, with input in the hiring of that individual.

The District asserts that the petition to include the position is premature at this point since it is speculative at this point as to what form the position will take after the program is in place and how much will be administrative, supervisory or managerial as compared to bargaining unit employees. Since that is all uncertain at this point, it is not possible to apply the seven factors of Arrowhead. The program is not required by the State and there are no DPI guidelines or requirements for certification for the position. Since the position is not presently in the bargaining unit and there is nothing in the record to support the Association's request to include it, the request should be denied.

The District makes several contentions that apply generally to all four positions. First it asserts that the form of the employment contract used by the District is not important, as some of the language from the teacher contracts are utilized in other administrative contracts, including Peterson's.

All of the positions are accountable directly to Peterson and the Board, and none of them report to the principals as do the teachers. The teachers have a set budgetary amount to work with and after preparing a budget for their individual room they submit it to the principal, and it is in turn submitted as a part of the budget for that school. Conversely, the budgets prepared by the individuals in the four positions are submitted directly to Peterson and are separate unit budgets. With regard to negotiations, Peterson testified that if he wanted something in a District proposal for purposes of negotiations, he would seek input from those positions in formulating the proposal. To include the positions in the bargaining unit requires a showing of community of interest, and this means something more than just similar duties and working conditions. In this case, none of the positions have duties or working conditions similar to the teachers, nor do they have the same number of contract days. The individuals in the positions have independently negotiated their contracts and they are accountable directly to Peterson, rather than to the principals. There is no historical basis for their inclusion in the bargaining unit, and they all consider themselves a part of the administrative team, and have not indicated any desire to be included in the bargaining unit.

They all have the authority to commit resources, are required to formulate an original budget and allocate District funds and each has the authority to make effective recommendations for the amount of the budget and the manner in which funds will be expended. In the instance of Burchby, she has the authority to spend funds from the grants without direction from the Board. Thus, the Association has failed to show that any of the positions share a community of interest with the positions in the existing bargaining unit so as to justify their inclusion.

#### DISCUSSION

The bargaining unit involved was voluntarily agreed upon and that agreement is reflected in Section II - Recognition of the Bargaining Unit, contained in the parties' Collective Bargaining Agreement, which reads as follows:

#### SECTION II - RECOGNITION OF THE BARGAINING UNIT

The Board recognizes the Northland Pines Education Association as the legally constituted bargaining agent under the provisions of Section 111.70 of the Wisconsin Statutes for all regularly employed classroom teachers, librarians, and guidance counselors, which shall include teachers hired to replace teachers leaving the Northland Pines system permanently, but which shall not include substitute teachers and shall exclude all managerial and supervisory employees, including the

position of Athletic Director/Attendance/Discipline Officer unless such positions would include regularly assigned teaching duties.

The District argues that none of the positions in question fall within the above description of the unit. If we were satisfied that the parties' unit description reflected an agreement to exclude these positions, we would dismiss the petition. The parties, however, stipulated that none of the positions existed at the time the parties agreed to the scope of the bargaining unit. Further, the agreed-upon description does not expressly exclude all other professional employees of the District from the unit. In such circumstances we are persuaded the parties have not agreed to exclude these positions from the unit. 2/ Therefore, we will proceed to determine whether inclusion is otherwise appropriate.

The District asserts that the positions in question are supervisory, managerial or executive in nature and that, therefore, the incumbents in those positions are not "municipal employees" within the meaning of Sec. 111.70(1)(i), Stats.

In determining supervisory status of a position, the Commission, in recognition of the statutory definition in Sec. 111.70(1)(o)1, Stats., considers the following criteria:

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 employees exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for her skill or for her 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 she spends a substantial majority of her time supervising employees; and
7. The amount of independent judgment and discretion exercised in the supervision of employees. 3/

The Commission has also held that not all of the above factors need be

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2/ City of Sheboygan, Dec. No. 7378-A (WERC, 5/89); Dane County, Dec. No. 15696-A (WERC, 12/88).

3/ Jackson County, Dec. No. 17828-E (WERC, 3/91); City of Mauston, Dec. No. 21424-B (WERC, 10/86).

present, but if a sufficient number of said factors appear in any given case the Commission will find an employe to be a supervisor; further, even though an employe may spend a majority of her time doing non-supervisory duties, the Commission has found supervisory status where sufficient responsibilities and authority are present. 4/

In the absence of a statutory definition of what constitutes a "managerial" employe, the Commission has, through case law, developed a definition of managerial status as being one who participates in the formulation, determination and implementation of management policy, or one who has the authority to commit the employer's resources. 5/ We have held that to yield managerial status, the involvement in the employer's policy must be at "a relatively high level of responsibility", 6/ and that managerial status based on the allocation of the employer's resources "necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided, or the kind and number of employes to be used in providing services." 7/

The District has also asserted that the positions in question are "executive" in nature. It is rare that such an assertion is made and, as a result, there is not a well-developed definition of "executive" status, as there is with managerial status. We have, however, previously had occasion to define "executive" as it is used in Sec. 111.70(1)(i), Stats.:

In our view the commonly understood meaning of the term "executive", if it is to be distinguished from the term "managerial" as it is in Section 111.70(1)(b), 8/ refers to an individual possessing managerial authority who has the overall responsibility for the management of an agency or major department of the employer. Thus an executive employe also has managerial and/or supervisory responsibilities, but is distinguishable by reason of his or her possession of the overall responsibility and authority for an agency or major department. 9/

Student Assistance Program Coordinator

With regard to supervisory status, the record indicates that Lyon has no responsibility with regard to the hiring, disciplining or discharge of other District employes. Her authority to contract out for temporary secretarial

4/ Jackson County, supra; Dec. No. 18728-B (WERC, 1/87).

5/ Vernon County, Dec. No. 13805-B (WERC, 4/91); Taylor County, Dec. No. 24261-D (WERC, 11/91); Milwaukee v. WERC, 71 Wis. 2d 709 (1976).

6/ Village of Jackson, Dec. No. 25098 (WERC, 1/88); Vernon County, supra.; Taylor County, supra.

7/ Vernon County, supra.; Village of Jackson, supra.; City of Whitewater, Dec. No. 24354 (WERC, 3/87), Jackson County, Dec. No. 17828-B (WERC, 10/86).

8/ Presently, Sec. 111.70(1)(i), Stats.

9/ City of Oak Creek (Fire Department), Dec. No. 17633 (WERC, 3/80).



services and to terminate such a contract is not relevant in determining supervisory status, as the individual Lyon contracts with is not considered an employe of the District. As we noted in Jackson County, supra. at footnote 4, claimed supervisory status based upon involvement with and authority over independent contractors "overlooks a basic premise -- reflected in both statute and Commission case law -- that supervisory status cannot be found through the supervision of non-employes." By definition, an independent contractor is not an employe.

The record indicates that Lyon essentially supervises the Student Assistance Program, i.e., an activity, rather than employes. She has no employes under her. While she has evaluative and assignment authority over the volunteer status of District employes in the student support groups, her authority does not affect their regular jobs in the District. Given the foregoing, we are satisfied that Lyon is not a supervisory employe.

As to managerial status, the evidence shows that Lyon, as SAP Coordinator, chairs the committee responsible for developing the District's policy with regard to its AODA and Student Assistance Program. Lyon has overall responsibility for implementing District policy in this area and for monitoring the program to determine if policy goals are being met.

Lyon's authority to commit District resources is limited. She has some discretion to allocate funds within her \$3000 local budget in deciding which projects or programs within the SAP to supplement. However, this discretion does not have a significant effect on the nature and direction of the SAP program or the kind and level of services provided.

Although it is a close question, Lyon's involvement in the formulation, determination and implementation of District policy is not at a sufficiently high level to establish that Lyon is a "managerial" employe within the meaning of the Municipal Employment Relations Act (MERA). Her role in program formulation and determination is shared by other members of the committee she chairs. Her implementation responsibilities are significant but ultimately reflect her professional responsibilities more than managerial status.

Having so concluded, we are also persuaded the evidence also does not support a finding of "executive" status.

Section 111.70(4)(d)2.a., Stats., provides in relevant part:

2.a. The Commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit...

We have held that, in furtherance of that statutory mandate to avoid fragmentation and in recognition of their common educational mission:

"all occupants of professional positions in a K through 12 school setting, who work with students and teachers, whether certified or not certified, by the Department of Public Instruction shall, absent special circumstances, be included in a unit consisting

primarily of teachers." 10/

Thus, while the District correctly notes that there are differences in the wages, hours, working conditions and supervision of the SAP Coordinator and unit members, we are not persuaded those differences are sufficient to exclude the position from the unit.

#### District-Wide Curriculum/Computer/Grant Coordinator

The record supports a finding that Burchby is a "managerial" employe within the meaning of MERA based upon her involvement in the formulation, determination and implementation of District policy with regard to both curriculum and the District's computers program. Burchby attends all Board meetings and administrative team meetings, and at the Board meetings reports on how programs are being implemented with regard to curriculum and computers. Burchby also has made effective recommendations to Peterson and the Board with regard to the purchase of computer hardware and software and the purchase of computer service contracts. Besides her involvement in the District's educational policies and programs with regard to curriculum and computers, Burchby also is responsible for developing District policy with regard to textbook adoption procedures in the District. Burchby is also responsible for evaluating the District's educational programs and recommending changes to meet needs, which may involve recommending cutting back or adding programs which in turn can affect staffing levels in the programs.

Having concluded that Burchby is a managerial employe, it is not necessary to determine her executive status.

#### School Psychologist

The record indicates that the School Psychologist position is new in the District. While the incumbent, Lodholz, had provided that service to the District in the past, it was through CESA No. 9 and 1990-91 was his first year as a District employe. Lodholz was paid more than the top end of the teacher's salary grid in the parties' Agreement for 1990-91, i.e., \$41,933.00 vs. \$39,836.00, however, Lodholz has a Master's Degree plus 32 credits and Peterson testified he considered that fact in deciding what Lodholz should be paid. He chairs the M-Teams and IEP meetings, however, he described his role in those regards as one of coordinating and integrating information given at those meetings, albeit when he chairs the IEP meetings he is the administration representative at the meetings pursuant to federal law requirements that one be present. Lodholz's responsibility with regard to chairing the M-Teams or IEP meetings are in the nature of supervising an activity rather than employes. Besides Lodholz, the Special Education Director or the building principal also chair IEP meetings as the District's administrative representative. Lodholz's present responsibilities do not include any supervisory authority over other employes of the District. Beyond having authority to have a secretary work overtime to complete his paperwork, Lodholz has no employes who report to him and has no direct input into their hiring, discipline or evaluation. While Lodholz testified that if there were another school psychologist hired, he would be the supervising psychologist, and would have a role in hiring a secretary, if one were needed, that is not the present circumstance. The Commission cannot base its determination of supervisory status on speculation about what would be the case if circumstances change. Thus, we have concluded

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10/ Jt. School District No. 1, City of Superior, Dec. No. 13238-A (WERC, 6/76). See also River Falls Jt. School District No. 1, Dec. No. 13804-A (WERC, 10/76); Tomahawk Unified School District No. 1, Dec. No. 12483-B, C (WERC, 8/77); Germantown School District, Dec. No. 17494 (WERC, 12/79).

that Lodholz's position does not have sufficient indicia of supervisory responsibilities and authority upon which to base a finding of supervisory status.

With regard to the alleged managerial status of the School Psychologist position, the record does not disclose any direct involvement in the formulation, determination and implementation of District policies at a relatively high level. Lodholz's budget for 1990-91 was already set when he was hired by the District so he had no input into that budget. The testimony of Lodholz and Peterson indicates that in coming school years, Lodholz will be responsible for establishing his own budget which he will then submit to Peterson and the District's Business Manager. The budget that Lodholz is to prepare in future years is to cover his convention attendance, travel, office supplies, testing material, etc. As to any items not budgeted for that he wishes to procure, Lodholz must submit a purchase order to Peterson for the latter's approval.

As noted previously, preparation of a budget, per se, does not establish effective authority to commit the employer's resources. 11/ We have held that

"to be considered managerial, an individual's budget preparation duties must involve authority to allocate resources in a manner which significantly affects the nature and direction of the employer's operations. Authority to significantly affect the nature and direction of the municipal employer's operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employes to be utilized in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided, including the use of outside contractors." 12/

Given the minor nature of Lodholz's budget items, his authority in this area does not rise to the level required to find managerial status. Further, given our holding noted earlier, that "executive" status requires something beyond "managerial" status, we conclude the instant record does not support a finding of executive status, without addressing whether the School Psychologist would constitute a "major department" of the employer.

The District also asserts that the School Psychologist lacks a community of interest with the employes in the bargaining unit represented by the Association. The District bases its assertion primarily on the fact that Lodholz has different duties and skills, that he is not required to be certified to teach, has different hours and working conditions, reports directly to Peterson rather than to a principal, and historically has not been included in a bargaining unit. The record indicates that Lodholz routinely works with students evaluating their needs and consults with classroom teachers and the Special Education teacher, and in addition works with those teachers in the M-Team and IEP meetings. Lodholz has the same basic work hours as do the teachers and the administrators, but often works beyond those hours and has more flexibility in his coming and going. His office is located in the Middle School and although his work takes him to outside agencies, most of his work is

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11/ Jackson County, Dec. No. 17828-B, supra; Taylor County, supra.

12/ Jackson County, Dec. No. 17828-B, supra.

performed in the schools.

As was the case with the SAP Coordinator, while there are some differences between the School Psychologist and the members of the bargaining unit, those differences are outweighed by the statutory directive to avoid fragmentation and the similarities that are present. 13/

#### Gifted and Talented Coordinator

With regard to the GTC position held by Yagow, the record indicates that it is a one-quarter time position with Yagow employed the remaining three-quarters as a Chapter I teacher. There is no evidence that Yagow has any supervisory responsibilities with regard to other District employes. The most that may be said in that regard is that she will coordinate the efforts of other teachers who volunteer as mentors for the Gifted and Talented Program. In other words, she will be overseeing a program, rather than supervising the volunteers as employes. With regard to her involvement in the hiring of a secretary for the program if it develops to the point of needing one, that is speculation at this point and not a basis for finding supervisory status.

As to the "managerial" status of the GTC, there is no evidence that Yagow was involved in the policy decisions regarding the program, but was instead hired in the position to implement the Board's decision to establish a Gifted and Talented Program at the elementary school level. While Peterson testified Yagow will be responsible for submitting a budget for the program, there is no evidence as to what would make up that budget or as to Yagow's authority to reallocate resources within that budget.

The District asserts that historically the GTC position has not been included in the bargaining unit and that the Association has failed to provide evidence that it should now be included. However, the record indicates that, like the School Psychologist and even more so, the GTC is involved in working with students and teachers in the school setting in support of the educational program, 14/ that the person in the position is required by the District to have a teaching certificate or degree, and that the person in the position is paid in accord with the salary grid in the parties' Agreement, as was the past person in the position. Given the statutory mandate to avoid fragmentation, and the similarities noted above, we conclude that there is not sufficient evidence in the record for finding that the GTC position should be excluded from the bargaining unit and that the position shares a community of interest with the employes in the unit. Therefore, we have included the position in the unit. 15/

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13/ We previously reached a similar result with regard to School Psychologists; see Germantown School District, supra; River Falls Joint School District No. 1, Joint School District No. 1, City of Superior, supra; and Kenosha Unified School District No. 1, Dec. No. 13431 (WERC, 3/75). Cf. Milwaukee Board of School Directors, Dec. No. 13787-G, 16009-D (WERC, 11/79). Where a separate unit of school psychologists was held to be appropriate based on the number of said employes (108) and a bargaining history of 8 years as a separate group and a separate psychologist organization that had existed for 14 years. Cumberland Community Schools Jt. District No. 2, Dec. No. 15214 (WERC, 1/77) where psychologists specifically excluded by parties.

14/ Germantown School District, supra; Tomahawk Unified School District No. 1, supra.

15/ For a similar result, see DePere Unified School District, Dec. No. 26572

Given under our hands and seal at the City of  
Madison, Wisconsin this 7th day of February,  
1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/  
Herman Torosian, Commissioner

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

I concur in part and dissent in part.

A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

NORTHLAND PINES SCHOOL DISTRICT

DISSENT OF CHAIRPERSON A. HENRY HEMPE

While I concur with the majority's conclusions in regards to the positions of Curriculum/Computer/Grant Coordinator, School Psychologist, and Gifted and Talented Coordinator, I disagree as to its conclusion that the Student Assistance Program (SAP) Coordinator position is not managerial.

The record establishes that Lyons, in her position as SAP Coordinator, chairs the District's Student Assistance Steering Committee. That committee has been responsible for developing the District's policies with regard to its AODA and Student Assistance programs, which policies have been adopted by the Board. Lyons is also primarily responsible for implementing those policies.

The majority's conclusion that Lyons' involvement in the formulation, determination and implementation of District policy is not at a sufficiently high level to establish managerial status is based on its apparent perception that her role in the formulation and determination of policy is equally shared by other members of the committee. More reasonable to me is an alternate view, i.e., that as chair of the committee, Lyons is a significant leadership force. Nothing in the record suggests Lyons' role is merely that of a co-equal with other committee members.

Moreover, of even greater significance is that under the majority's reasoning in this instance, one would have to be a School Board member to meet the test of managerial status as to policy development. Such reasoning appears to ignore the realities of the decision-making process in public sector school districts.

Similarly, I find no evidence that any limitation on Lyons' authority to allocate monies to various SAP programs from her local budget is any greater than realistically and legally necessary. Accordingly, I do not perceive such limitation as diluting her managerial status.

Based on the foregoing, I am satisfied that Lyons' SAP responsibilities bring her position to a sufficient level to satisfy our test of "managerial" status.

Dated at Madison, Wisconsin this 7th day of February, 1992.

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