

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**ELKHART LAKE - GLENBEULAH EDUCATIONAL SUPPORT  
PERSONNEL ASSOCIATION**

Involving Certain Employees of  
**ELKHART LAKE - GLENBEULAH SCHOOL DISTRICT**

Case 34  
No. 68940  
ME(u/c)-1281

**Decision No. 27370-C**

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**Appearances:**

**James R. Carlson**, UniServ Director, Kettle Moraine UniServ Council, N7778 Rangeline Road, Sheboygan, Wisconsin 53083, appearing on behalf of the Elkhart Lake – Glenbeulah Educational Support Personnel Association.

**Ann Buechel Haack**, District Administrator, 201 North Lincoln Street, P.O. Box “K”, Elkhart Lake, Wisconsin 53020, appearing on behalf of the Elkhart Lake – Glenbeulah School District.

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

On May 27, 2009, the Elkhart Lake – Glenbeulah Educational Support Personnel Association, herein the Association, filed a unit clarification petition with the Wisconsin Employment Relations Commission seeking to determine whether the position of Buildings and Grounds Coordinator should be included in the bargaining unit of employees of the Elkhart Lake-Glenbeulah School District, herein the District, represented by the Association. The District, contrary to the Association, asserts that it has modified the duties of the current bargaining unit Head Custodian to such an extent that the incumbent in the new Buildings and Grounds Coordinator position will be a supervisor and/or managerial employee who should therefore be excluded from the Association bargaining unit.

No. 27370-C

Hearing was held in Elkhart Lake, Wisconsin on August 4, 2009 before Commissioner Paul Gordon. A transcript was prepared, the parties filed written briefs and reply briefs, and the record was closed on October 23, 2009.

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

### **FINDINGS OF FACT**

1. The Elkhart Lake – Glenbeulah School District, herein the District, is a municipal employer which has its principal office at 201 North Lincoln Street, Elkhart Lake, Wisconsin.

2. The Elkhart Lake – Glenbeulah Educational Support Personnel Association, herein the Association, is a labor organization serving as the collective bargaining representative of a bargaining unit described in the parties' 2008-2010 contract as:

All regular full-time and regular part-time custodians, instructional aides, clerical workers, clerical aides and food service employees employed by the Elkhart Lake – Glenbeulah School District, but excluding professional, confidential, supervisory and managerial employees, who were employed on August 31, 1992, as certified by the Wisconsin Employment Relations Commission under certification order No. 47508, dated October 6, 1992.

The bargaining unit currently includes two full-time custodians (one of whom is the current Head Custodian and the future Buildings and Grounds Coordinator), a part-time custodian and five part-time cleaners. These eight employees are responsible for maintaining and cleaning the District's two school buildings-one of which houses the high school and the other the elementary and middle schools

3. The Job Description for the Head Custodian position reads as follows:

Reports to: Building Principal, District Administrator, and/or designee.

### **GENERAL DUTIES**

To perform district-wide operations and maintenance supervisory responsibilities as well as custodial and maintenance tasks within the school buildings as assigned by the District Administrator, building Principal and/or designee, including but not limited to:

### SUPERVISORY RESPONSIBILITIES

1. Assist in the hiring process of building custodians and cleaners upon request.
2. Train/supervise/assist in evaluation of all building custodians and cleaners.
3. Complete all reports as required by the district, state or federal agencies.
4. Secure outside contractors for approved operation and maintenance work.
5. Develop and implement annual operations/maintenance budget.
6. Assist in the completion of district-wide operations and maintenance.

### CUSTODIAL DUTIES

To perform general cleaning, housekeeping and maintenance work. Perform related work as required and directed, to operate and maintain the building in an orderly manner.

1. Conduct building inspections and keep records to assure established policy and procedures are being properly implemented.
2. See that the building and grounds are kept clean, orderly, safe and sanitary condition and protected from loss due to fire, theft, and water damage.
3. Perform maintenance duties to include but not limited to painting, carpentry, plumbing and electrical wiring.
4. Maintain the grounds, driveway areas, playground and walkways.
5. Make repairs on buildings, machinery and equipment.
6. Operate and in charge of light equipment and vehicles, HVAC plants and mechanical facilities including boilers, pumps, heaters, thermostats, appliances and repairs thereto.
7. Maintain all playground equipment and inspect monthly.
8. Cleaning responsibilities including but not limited to
  - A. Scrub, mop, clean, wax, vacuum, and polish floors.
  - B. Dust, clean, and polish furniture, other school equipment and metal work.
  - C. Wash windows, chalkboards, woodwork, and fixtures.
  - D. Replace light bulbs, towels and soap.
  - E. Keep premises in orderly condition by sweeping and cleaning walks, mowing lawns, raking leaves, shoveling snow and maintaining shrubbery.

- F. Empty wastebaskets, collect and dispose of trash daily.
  - G. Clean drinking fountains, sinks, urinals, and toilets daily and shower rooms minimally every other day or as necessary to maintain sanitary conditions.
  - H. Clean lunch rooms and aid the food service personnel as needed, including loading and unloading hot lunch.
- 9. Maintain building security by unlocking and locking doors as necessary.
  - 10. Deliver supplies throughout buildings when so directed.

Perform any and all tasks within the normal realm of the job responsibilities as may be assigned by the district administrator, building principal, and/or designee.

4. The job description for the new Buildings and Grounds Coordinator position reads as follows:

Reports to: Building Principal, District Administrator, and/or designee.

GENERAL DUTIES:

On a district-wide basis supervises all custodians and cleaners and directs all custodial and maintenance operations and functions within school district buildings to include those assigned by the District Administrator, Building principal and/or designee, including but not limited to:

SUPERVISORY RESPONSIBILITIES:

- 1. Direct the hiring process for all building custodians and cleaners and effectively recommend specific hiring decisions to the District Administrator.
- 2. Effectively recommend to the District Administrator the discipline, discharge, transfer and promotion of building custodians and cleaners.
- 3. Assign work to, and direct the manner of work performance by all custodians and cleaners.
- 4. Evaluate, train, and supervise all building custodians and cleaners.
- 5. Assure completion of district-wide building operations and maintenance work.

PROGRAM/MANAGERIAL RESPONSIBILITIES:

Direct and perform all school district general cleaning and maintenance work in buildings. Assign or perform work as required or directed, to properly operate and maintain school district buildings in a safe and efficient manner, including:

1. Develop and implement an annual operations and maintenance budget, to include independently making expenditures and reallocating amounts between sub-accounts.
2. Conduct building inspections and keep records to assure established Board of Education policies and procedures are properly implemented.
3. Assure that buildings and grounds are kept in clean, orderly, safe and sanitary condition and protected from loss due to fire, theft and water damage.
4. Secure outside contractors for approved operations and maintenance work.
5. Assign and perform maintenance duties that include, but are not limited to painting, carpentry, plumbing and electrical wiring.
6. Complete all reports as required by the district, state or federal agencies.
7. Assure that the grounds, driveway area, playground and walkways of all school district buildings are properly maintained.
8. Make repairs to buildings, machinery and equipment.
9. Have responsibility for proper operation and maintenance of lighting equipment, vehicles, HVAC plants and mechanical facilities including boilers, pumps, heaters, thermostats, appliances and repairs thereto.
10. Assure that all playground equipment is properly maintained and inspect at least monthly.
11. Serve as a key member of the district crisis management team.
12. Assign and direct, or perform cleaning work including, but not limited to:
  - A. Scrub, mop, clean, wax, vacuum, and polish floors.
  - B. Dust, clean, and polish furniture, other school equipment and metal work.
  - C. Wash windows, chalkboards, woodwork, and fixtures.
  - D. Replace light bulbs, towels and soap.
  - E. Keep premises in orderly condition by sweeping and cleaning walks, mowing lawns, raking leaves, shoveling snow and maintaining shrubbery.
  - F. Empty wastebaskets, collect and dispose of trash daily.

- G. Clean drinking fountains, sinks, urinals, and toilets daily and shower rooms minimally every other day or as necessary to maintain sanitary conditions.
  - H. Clean lunch rooms and aid the food service personnel as needed, including loading and unloading hot lunch.
- 13. Assure building security, to include unlocking and locking doors as necessary.
  - 14. Assign delivery tasks, or deliver supplies to and throughout buildings.

Perform any and all tasks within the normal realm of the job responsibilities or as may be assigned by the District Administrator, Building Principal, and/or designee.

5. The incumbent Head Custodian is currently the highest paid member of the bargaining unit with a contractually established wage rate of \$19.41 per hour. The other full-time custodian, who has one more year of seniority than the incumbent Head Custodian, is paid a contractually established rate of \$17.15 per hour. With overtime, the incumbent Head Custodian most recently earned between \$47,000.00 and \$48,000.00 annually. This individual's annual salary as Buildings and Grounds Coordinator will be \$51,000.00. The increase in salary reflects the loss of overtime opportunities and the risk of no increase or of a decrease in future compensation that will accompany removal from the bargaining unit, as well as consideration of the salary of other comparable buildings and grounds positions elsewhere.

6. In the past, when making custodian and cleaner hiring decisions, the Principal of the school where the employee would work and the Head Custodian jointly reviewed the applications and decided who would be interviewed, interviewed candidates using prepared questions, and then, if possible, made a joint recommendation to the Superintendent as to whom to hire. These joint recommendations have always been supported by the Superintendent and the recommended applicant was always hired by the District's School Board. On the one occasion when the Head Custodian and the building Principal could not reach agreement on a joint recommendation, no applicant was hired.

The Buildings and Grounds Coordinator will do all of the applicant screening and interviewing alone, with the option of having the building Principal meet the applicant the Coordinator intends to recommend for any feedback. The Buildings and Grounds Coordinator will then recommend an applicant to the Superintendent who would, in turn, take the hiring recommendation to the Board. The Superintendent reserves the option of having discussion with the Coordinator about the recommended applicant if she has a specific concern.

7. In the past, the Head Custodian had no authority to formally discipline or effectively recommend formal discipline of an employee, but did provide the District with information about employee work performance that led to formal discipline.

The Buildings and Grounds Coordinator will have the authority to independently issue verbal and written warnings and effectively recommend suspensions to the Superintendent.

8. The parties' collective bargaining agreement contains the form to be used for employee evaluations. Employees are typically evaluated every other year with the evaluation process taking between an hour and a half to two hours, including the employee interview.

In the past, the Head Custodian did not independently evaluate employees. He did review the draft evaluations prepared by the building Principals and suggest additions or deletions.

The Buildings and Grounds Coordinator will independently evaluate the other custodians and cleaners using the contractually mandated format and forward a copy of the evaluation to the Superintendent.

9. In the past, the Head Custodian reassigned work sites of other custodians and cleaners only if someone was sick or similarly absent, and then only for short periods of time. He did not permanently change or effectively recommend the permanent change of employee work sites.

The Buildings and Ground Coordinator will temporarily reassign the work sites of other custodians and cleaners as needed and have the authority to effectively recommend permanent change of employee work sites.

10. In the past, the Head Custodian and the building Principals both assigned duties to the other custodians and the cleaners.

The Buildings and Grounds Coordinator will have the primary responsibility to direct and assign the duties of the other custodians and cleaners. The Coordinator will monitor the work and effectiveness of the custodians and cleaners and return to the District buildings as and when needed to see that the District's custodial and cleaning needs are met.

11. In the past, the Head Custodian did not have the authority to change the work schedules of employees but did have the authority to call in employees to work on a non-overtime basis, if needed.

The Buildings and Grounds Coordinator will have the authority to call in additional employees to work on a non-overtime basis and, in consultation with the Superintendent, will have the authority to change employee work schedules.

12. In the past, the appropriate building Principal or the Superintendent approved or denied custodian and cleaner requests for vacation, sick leave, compensatory time or other leaves.

The Buildings and Grounds Coordinator will approve or deny custodian and cleaner requests for vacation, sick leave, compensatory time or other leaves and have the responsibility for maintaining leave records.

13. The current collective bargaining agreement requires that employee grievances be filed with the appropriate building Principal. The Head Custodian had no contractual authority to adjust grievances. Under the existing contract language, grievances will not be filed with the Building and Grounds Coordinator and the Coordinator will not have the contractual authority to adjust grievances.

14. The Head Custodian spent a majority of his time performing the same type of work as other custodians and the Buildings and Grounds Coordinator will spend a majority of his time performing the same type of work as other custodians.

15. The Head Custodian did not attend supervisory or management group meetings. He was involved in the formulation of a crisis management plan. The Buildings and Grounds Coordinator will attend those meetings and also be part of the District's crisis management team.

16. The Head Custodian did not prepare a budget. He was given a prepared budget and had the independent authority to spend within the budget's confines, with purchases over \$1,000.00 requiring bids from among which he effectively recommended selection. He had not developed a long term plan as to the District's buildings and grounds.

The dollar amount and basic configuration of the yearly budget for buildings and grounds will not change significantly with the creation of the Buildings and Grounds Coordinator position. The Coordinator will be involved in developing the yearly budget along with the District's management team. The Coordinator will develop a long range plan as to the District's buildings and grounds.

17. The Buildings and Grounds Coordinator will have supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

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

### **CONCLUSION OF LAW**

The Buildings and Grounds Coordinator is a supervisor within the meaning of Sec. 111.70 (1)(o)1, Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following



**ORDER CLARIFYING BARGAINING UNIT**

The Buildings and Grounds Coordinator is excluded from the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at Madison, Wisconsin, this 11<sup>th</sup> day of March, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**ELKHART LAKE-GLENBEULAH SCHOOL DISTRICT**

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

As part of a larger administrative reorganization, the District has developed the position of Buildings and Grounds Coordinator which will replace the current Head Custodian position. The incumbent Head Custodian will become the Buildings and Grounds Coordinator.

The District contends that the Buildings and Grounds Coordinator will be a supervisor and a managerial employee who should be excluded from the Association bargaining unit. The Association argues that the Coordinator will not be a managerial employee, that most of the duties of the new position are already being carried out by the incumbent Head Custodian, that the supervisory authority of the Coordinator position will be de minimus, and that the amount of time the Coordinator will devote to any added supervisory duties is too minimal to justify supervisory status.

**Supervisory Status**

A supervisor is defined in Sec. 111.70(1)(o)(1) Stats. as follows:

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

When evaluating a claim of supervisory status under Sec. 111.70(1)(o)1, Stats., we consider the following factors:

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 persons 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 his/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97).

Not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors are present in sufficient combination and degree to warrant finding an employee to be a supervisor. WALWORTH COUNTY, DEC. NO. 29378 (WERC, 5/98).

We recognize the prospective nature of the Coordinator's duties. However, we have held that an employee's bargaining unit status can be based upon an employer's good faith assertions as to what will happen in the future, as long as those assertions are not too speculative to warrant consideration. See, CITY OF TWO RIVERS, DEC. NO. 31519-B (WERC, 11/06); CLARK COUNTY, DEC. NO. 16648-B (WERC, 6/04); CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97). We find that the District's assertions are not speculative and are made in good faith. The creation of the Coordinator position and the asserted duties of the new position are part of a larger administrative reorganization in the District which, among other things, will allow the building Principals to focus more on educational as opposed to operational matters. The Association correctly points out that the actual number of administrators in the District has not and will not decrease significantly under the reorganization. However, what is important in the context of this proceeding is our conclusion that the changes the District intends to implement are being made for good faith reasons. Thus, when deciding whether the Buildings and Grounds Coordinator is a supervisor, we have considered the authority the District asserts the Coordinator will have in the future over the custodians and cleaners. We now turn to an analysis of the evidence presented as to the above-recited statutorily-related supervisory factors.

As to Factor 1 regarding hiring, the Head Custodian had significant participation in the hiring process but needed the building Principal's agreement before an effective hiring recommendation could be made to the Superintendent. The Buildings and Grounds Coordinator will have more authority and responsibility than the Head Custodian as to hiring. The Coordinator alone will make the initial determination as to whom to interview and will conduct the interviews alone. While the Coordinator will have the option of consulting with the affected building Principal, the Coordinator will make the final decision on whom to recommend to the Superintendent. Because we are satisfied that the Superintendent and School Board will follow the Coordinator's recommendation (absent their independent disqualifying knowledge of the recommended applicant), we conclude the Coordinator will be effectively recommending new hires.

Factor 1 also considers discipline and discharge. The Head Custodian did not have any disciplinary authority but did provide performance information to the Principals and Superintendent. The Buildings and Grounds Coordinator will have the independent authority to issue verbal and written warnings as well as to effectively recommend disciplinary suspensions to the Superintendent.

Based on the evidence presented, transfers, promotions, layoffs or recalls are not relevant considerations. As to the authority to adjust grievances, current contract language gives such authority to building Principals, and, hence, absent a change in contract language, the Coordinator will not have such authority.

Concerning Factor 2, the Buildings and Grounds Coordinator will have substantial authority in directing and assigning the work of custodians and cleaners. Currently that authority is shared with the building Principals, who worked with or through the Head Custodian to direct work. The Coordinator will now independently assign work and work locations to employees.

As to Factor 3, the Coordinator will supervise seven of the 23 employees in the Association bargaining unit. The Coordinator will report directly to the Superintendent who is the only other District employee with any significant supervisory authority over the custodians and cleaners.

Considering Factor 4, level of pay, the Head Custodian is currently the highest paid member of the bargaining unit. The new Coordinator position will receive approximately \$3,000.00 additional annual pay. While the Coordinator salary of \$51,000.00 is partly designed to offset the uncertainty of future salary increases and the loss of overtime that will accompany removal from the bargaining unit, it also reflects consideration of the salary received by other comparable buildings and grounds coordinators. Thus, we are convinced that at least some of the increase in compensation is a reflection of added supervisory duties.

As to Factor 5, the Buildings and Grounds Coordinator will be responsible for supervising the custodians and cleaners. In addition to his role in hiring and discipline, the Coordinator will assign their work, evaluate their job performance and approve vacations, sick leave, compensatory time, and other leave within the confines of the collective bargaining agreement.

Turning to Factor 6, the Buildings and Grounds Coordinator will still spend a substantial portion of his time performing custodial work similar to that done by the bargaining unit custodians.

Concerning Factor 7, because the building Principals and the Superintendent will have no direct role in supervising custodians and cleaners, the Buildings and Grounds Coordinator will exercise substantial independent judgment in the supervision of said employees.

Considering all of the foregoing, we conclude the Buildings and Grounds Coordinator will be a supervisor, primarily because he will have substantial disciplinary and hiring authority and will independently direct the work of seven employees and evaluate their job performance. Our decision in this regard is consistent with SOMERSET SCHOOL DISTRICT, DEC. NO. 24968-A (WERC, 3/88), where, although a Head Maintenance/Custodian spent most of his time performing the same work as other employees and directed the work of a small number of employees, he was found to be a supervisor because he effectively recommended discipline, checked employee work performance while on and off duty, and evaluated employees. Similarly, in WHITEHALL SCHOOL DISTRICT, DEC. NO. 29286-B (WERC, 7/99), even though the number of employees was small and the supervisor spent less than a majority of his time supervising employees, the disputed employee was found to be a supervisor because he had significant authority in hiring and discipline and exercised independent judgment in directing and assigning employees.

In reaching our conclusion, we have considered the Association's citation of the Commission's decisions in LACROSSE AREA SCHOOL DISTRICT, DEC. NO. 14653 (WERC, 5/76); GERMANTOWN AREA SCHOOLS, DEC. NO. 14762 (WERC, 7/76); WINTER JT. SCHOOL DISTRICT, DEC. NO. 16467 (WERC, 7/78); UNION GROVE JOINT SCHOOL DISTRICT NO. 1., DEC. NO. 13820-A (WERC, 12/76); MCFARLAND SCHOOL DISTRICT, DEC. NO. 17005-A (WERC, 9/79); WEST BEND JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 28491 (WERC, 8/95); SCHOOL DISTRICT OF LOYAL, DEC. NO. 18149 (WERC, 10/80); KENOSHA COUNTY, DEC. NO. 15371 (WERC, 3/77); and STANLEY-BOYD AREA JOINT SCHOOL DISTRICT NO. 4, DEC. NO. 11589-A (WERC, 7/73). However, in each of these decisions, the individuals found not to be supervisors lacked the disciplinary and/or hiring authority we have concluded the Coordinator will have here. Thus, these decisions are all substantively distinguishable on that basis.

Because we have found the Buildings and Grounds Coordinator to be a supervisor and excluded from the bargaining unit on that basis, it is not necessary for us to determine if he is also a managerial employee. If the Coordinator does not actually exercise the authority asserted by the District and identified in our decision, the Association may ask the Commission to review the issue in the future.

Dated at Madison, Wisconsin, this 11th day of March, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner