

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of  
GREEN BAY AREA SCHOOL DISTRICT  
Involving Certain Employes of  
GREEN BAY AREA SCHOOL DISTRICT.

Case 161  
No. 51479 ME-722  
Decision No. 28437

Appearances:

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by Mr. Jack D. Walker, Suite 600, Insurance Building, 119 Martin Luther King Jr., Boulevard, P.O. Box 1664, Madison, Wisconsin, 53701-1664, for the District.

Kelly & Haus, Attorneys at Law, by Ms. Carol Rubin, 148 East Wilson Street, Madison, Wisconsin 53703-3478, for the Green Bay Education Association.

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

On August 29, 1994, the Green Bay Area School District filed a petition with the Wisconsin Employment Relations Commission seeking to clarify a bargaining unit represented by the Green Bay Education Association by excluding positions which are not held by school district professional employes.

Hearing on the petition was held in Madison, Wisconsin on November 22, 1994 before Examiner Peter G. Davis.

The parties filed post hearing briefs, the last of which was received December 12, 1994.

Having considered the matter and being fully advised in the premises, the Commission made and issues the following

FINDINGS OF FACT

No. 28437

1. The Green Bay Area School District, herein the District, is a municipal employer having its principal offices at 200 South Broadway, Green Bay, Wisconsin 54303.

2. The Green Bay Education Association, herein the Union, is a labor organization having its principal offices at 1960 August Street, Green Bay, Wisconsin 54302 and serving as the exclusive collective bargaining representative of a bargaining unit of District employees described in the parties' 1991-1994 contract as:

All regular full-time, regular part-time certificated teaching personnel employed by the Board including classroom teachers, librarians, guidance counselors, psychologists, psychometrists, social workers, teachers of the homebound, department chairperson, unit leaders, job placement counselors, certified physical and occupational therapists, speech and language pathologists, nurses and teachers on leave of absence; but, excluding superintendents, principals and those directors and coordinators who are "supervisors" as defined in State Statutes 111.70.

3. During hearing, the parties stipulated that the positions of Nurse of the Medically Fragile, Occupational Health Coordinator, Mental Health/Social Service Coordinator and Health/Special Needs Coordinator should be excluded from the bargaining set forth in Finding of Fact 2 because they are not held by school district professional employees within the meaning of Sec. 111.70(1)(ne), Stats. The parties further stipulated that the Green Bay Education Association would continue to represent these positions in a separate bargaining unit.

At hearing, the parties further stipulated that the employees in the positions of Occupational Therapist, Physical Therapist and Educational Audiologist hold a license issued by the State Superintendent of Public Instruction under Sec. 115.28(7), Stats., and are required by the Department of Public Instruction to hold such a license to perform their duties for the District.

4. The District employs a Staff Development Specialist who is presently included in the bargaining unit set forth in Finding of Fact 2. The incumbent Staff Development Specialist has a license issued by the State Superintendent of Public Instruction under Sec. 115.28(7), Stats., and is required by the Department of Public Instruction to hold such a license to perform the duties of the Staff Development Specialist for the District.

5. The District employs a Federal Programs Preschool Coordinator who is presently included in the bargaining unit set forth in Finding of Fact 2. The incumbent Federal Programs Preschool Coordinator has a license issued by the State Superintendent of Public Instruction under Sec. 115.28(7), Stats., and is required by the Department of Public Instruction to hold such a license to perform the duties of the Federal Programs Preschool Coordinator for the District.

6. The District has a vacant half-time position of Education Coordinator which is presently included in the bargaining unit set forth in Finding of Fact 2. The District requires that the person who will fill this petition must have a license issued by the State Superintendent of Public Instruction under Sec. 115.28(7), Stats., to perform the duties of Education Coordinator.

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

#### CONCLUSIONS OF LAW

1. The incumbents in the positions of Nurse of the Medically Fragile, Occupational Health Coordinator, Mental Health/Social Service Coordinator and Health/Special Needs Coordinator are not school district professional employes within the meaning of Sec. 111.70(1)(ne), Stats.

2. The incumbents in the positions of Occupational Therapist, Physical Therapist, Educational Audiologist, Staff Development Specialist, and Federal Programs Preschool Coordinator are school district professional employes within the meaning of Sec. 111.70(1)(ne), Stats.

3. The individual who fills the position of Education Coordinator will be a school district professional employe within the meaning of Sec. 111.70(1)(ne), Stats.

Based upon the above and foregoing Finding of Facts and Conclusions of Law, the Commission makes and issues the following

#### ORDER CLARIFYING BARGAINING UNIT 1/

1. The positions identified in Conclusion of Law 1 and the incumbents in said positions are excluded from the bargaining unit set forth in Finding of Fact 2.

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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

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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.

(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.

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2. The positions identified in Conclusions of Law 2 and 3 and the incumbents in said positions shall continue to be included in the bargaining unit set forth in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of July, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

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

GREEN BAY AREA SCHOOL DISTRICT

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

Section 111.70(1)(b), Stats., mandates that school district employees who are "school district professional employees" be in a bargaining unit separate and distinct from one including employees who are not "school district professional employees." Grafton School District, Dec. No. 28093 (WERC, 6/94); Racine Unified School District, Dec. No. 7053-E (WERC, 8/94).

Section 111.70(1)(ne), Stats., defines a "school district professional employee" as:

. . . a municipal employee who is employed by a school district, who holds a license issued by the state superintendent of public instruction under s. 115.28(7), and whose employment requires that license.

Through its petition, the District asks us to determine whether certain positions/employees currently included in a bargaining unit must be excluded because they do not meet the definition of a "school district professional employee." As to the positions identified in Conclusion of Law 1, both the District and the Union argue said positions are not held by "school district professional employees." As to the positions identified in Conclusion of Law 2, the Union argues these positions are held by "school district professional employees" and the District asserts that the record supports such a conclusion. As to the positions identified in Conclusion of Law 3, the Union argues these positions are held by "school district professional employees" and the District contends their status is unclear.

Having considered the parties' stipulation set forth in Finding of Fact 3, we are persuaded that the positions of Nurse of the Medically Fragile, Occupational Health Coordinator, Mental Health/Social Services Coordinator and Health/Special Needs Coordinator are not held by "school district professional employees" and thus that these positions/employees are excluded from the bargaining unit in questions. Having considered that same stipulation, we are further persuaded that the positions of Occupational Therapist, Physical Therapist and Educational Audiologist are held by "school district professional employees" and that these positions/employees can appropriately continue to be included in the bargaining unit.

As for the position of Staff Development Specialist, Federal Programs Preschool Coordinator and Education Coordinator, the testimony of Sue Harris, Licensing Consultant, Bureau

for Teacher Education, Licensing and Placement, Department of Public Instruction and the job descriptions for these positions persuade us that either the Department of Public Instruction or the District require the incumbents in these positions to hold a license issued by the State Superintendent of Public Instruction under Sec. 115.28(7), Stats., to perform the positions' duties. The record further satisfies us that the incumbents in these positions have or will have such a license. Thus, we are persuaded the employes who are holding or will hold these positions are "school district professional employes" within the meaning of Sec. 111.70(1)(ne), Stats., and therefore that these positions/employes appropriately are included in the bargaining unit in question.

Dated at Madison, Wisconsin, this 28th day of July, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

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