

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**MONTELLO EDUCATION ASSOCIATION/
SOUTH CENTRAL SPECIAL PROJECT/WEAC**

Involving Certain Employes of
MONTELLO SCHOOL DISTRICT

Case 21
No. 58298
ME-999

Decision No. 29958

Appearances:

Mr. John D. Horn, UniServ Director, South Central Special Project/WEAC, 2900 Red Fox Run, P.O. Box 79, Portage, Wisconsin 53901-0079, appearing on behalf of the Montello Education Association/South Central Special Project/WEAC.

Friedman Law Firm, by **Attorney David R. Friedman**, 30 West Mifflin Street, Suite 1001, Madison, Wisconsin 53703, appearing on behalf of the Montello School District.

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

Montello Education Association, South Central Special Project/WEAC filed a petition on December 9, 1999 with the Wisconsin Employment Relations Commission to clarify a bargaining unit of professional employes of the Montello School District by including the School Nurse. The District opposes the petition because it believes the School Nurse is a supervisor.

Hearing was held in Montello, Wisconsin on April 27, 2000 by Examiner Lionel L. Crowley.

No. 29958

The parties filed post-hearing briefs and reply briefs, the last of which was received on June 30, 2000.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

The Commission, having reviewed the record and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Montello Education Association, South Central Special Project/WEAC, hereinafter referred to as the Association, is a labor organization and has its offices at P.O. Box 79, Portage, Wisconsin 53901-0079.

2. Montello School District, hereinafter referred to as the District, is a municipal employer and has its offices located at 222 Forest Lane, Montello, Wisconsin 53949.

3. The Association is the exclusive bargaining representative of the following District employees as described in the 1997-1999 collective bargaining agreement between the District and the Association:

All regular full-time and regular part-time staff members including classroom teachers, special teachers, guidance counselors and certified librarians. Excluded from this bargaining unit are: Administrators, principals, substitute teachers, contracted psychological services, managerial positions, supervisors and confidential employees.

4. The School Nurse, Jessica Napralla, is a full-time employee who has responsibility for providing health/medical services to students and employees of the District. She is paid a yearly salary of \$26,150.

The District employs several substitute nurses who are available to provide health/medical services when the School Nurse is absent. The School Nurse hires the substitute nurses and has the independent authority to discipline them – up to and including discharge. She directs the work of the substitutes, determines the level of training they need, and played a significant role in establishing their rate of pay. No other District employee exercises any significant authority over the substitute nurses.

During the eight month period of September, 1999 through April, 2000, the substitute nurses performed health/medical services on five days due to the School Nurse's absence. During this same eight month period, substitute nurses worked a total of 20 additional days as part of their training and to assist the Nurse during the annual screening of potential kindergarten students.

When District aide Hoffman performs health related duties for students, the Nurse is responsible for directing her work and would report any performance issues to the aide's direct supervisor.

5. The School Nurse, Jessica Napralla, does not exercise supervisory responsibilities in sufficient combination and degree to be a supervisor.

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

CONCLUSION OF LAW

The School Nurse is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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 School Nurse is hereby included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 18th day of August, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commissioner A. Henry Hempe did not participate in this matter because, during the pendency of this case, he was serving the parties as a mediator.

MONTELLO SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

Association

The Association contends that the School Nurse does not meet any of the seven criteria the Commission considers in determining supervisory status and certainly does not meet them in sufficient combination and degree to warrant exclusion from the bargaining unit.

As to the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes, the Association notes the District bases much of its case on the School Nurse's hiring her own substitutes. The Association argues that the amount of time engaged in this type of activity is so *de minimis* that it in no way substantiates supervisory status. It contends that substitutes work 5% of the Nurse's schedule. It submits that the Commission has held that at a bare minimum, at least 10% of an employe's time must be spent in a supervisory capacity. The Association contends the Nurse cannot supervise the substitutes when they are not present and alleges that training substitutes is supervising an activity - not supervising an employe. The Association also notes that bargaining unit employes are used to recruit substitute teachers.

The Association claims that Napralla's medical knowledge is relied upon by the District in her hiring substitutes - not her expertise and background in a supervisory capacity. It states that the only possible current employe that Napralla might supervise, Linna Hoffman, is supervised by Building Principal John Haugen.

With respect to the authority to direct and assign the work force and the number of employes supervised and the number of persons exercising greater, similar or less authority over the same employes, the Association asserts that the Principal is the supervisor of all regular employes, and has vastly greater authority over them than the School Nurse.

As for the level of pay, the Association states that the School Nurse's pay is based on her RN skills and not her limited role as a supervisor.

The Association maintains that the School Nurse is supervising an activity (medical procedures) not employes. It notes that the evidence established that the School Nurse was hired to give medical direction to other employes and to provide direct services to students. The Association contends that the School Nurse does not supervise other employes and performs health-care related duties. Finally, as to the amount of independent judgment exercised by the Nurse, the Association contends the School Nurse does not have complete independence as to the substitutes because the District has the final authority to set wages.

In conclusion, the Association observes that the record demonstrates that the School Nurse is a highly skilled and trained professional, but she is not a supervisor as her job duties do not meet any of the seven criteria necessary for a supervisor. It insists she is a municipal employe and should be included in the bargaining unit.

District

The District asserts that one of the prime criteria for determining supervisory status is whether the person has the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of an employe. The District points out that School Nurse Napralla interviewed five candidates for the nursing position and made an offer to four without any input from any other District employe. Thus, it argues that Napralla's role in hiring substitute nurses was substantial, not *de minimis*. The District claims that backup nurses are absolutely critical for the District to insure compliance with student M's federally-mandated rights. Napralla was chosen to be responsible for making sure that competent and skilled nurses are available to deal with student M's needs.

The District admits that Napralla has never had to fire anyone; however, she has the authority to do so. It submits that it is clear that the District relies on the expertise of Napralla to tell which backup nurse or teacher aide is not doing their job. The District cites CITY OF LACROSSE, DEC. NO. 27361-A and 7833-C (WERC, 1/94), DANE COUNTY, DEC. NO. 21397-B (WERC, 6/85) and DANE COUNTY, DEC. NO. 14844-C (WERC, 4/89) in support of its position. It contends that the power to hire and fire people is in and of itself sufficient for the Commission to find a person to be a supervisor. It submits that Napralla possesses that authority and thus that she is a supervisor.

Anticipating an Association argument that the substitutes and/or the aide are not in the bargaining unit and therefore that Napralla cannot be a supervisor, the District maintains this argument must fail for two reasons: (1) it makes no difference who is supervised as long as it is a municipal employe; and (2) supervisory status may be based on supervision of non-unit personnel.

The District insists that Napralla is responsible for one aide and the substitute nurses and thus meets the second supervisory criterion as she has the authority to direct and assign the work force. It points out she is responsible for training the substitute nurses and has assigned them to work a total of 116 hours. The District argues that there is no comparison between Napralla's calling substitute nurses to work and teachers' responsibility for calling substitute teachers. It states that teachers are professionals and lining up coverage is within their responsibility. Additionally, it alleges that assisting the District in locating a substitute teacher is not the same as interviewing, checking credentials and ultimately hiring the substitute nurses. It asserts that Principals hire substitute teachers, and Napralla interviews and hires the substitute nurses. The District contends that she alone determines when a substitute is required as well as determining whether they are sufficiently qualified and trained.

The District insists that Napralla meets the third criterion involving the number of employees supervised and number of others exercising greater, similar or lesser authority over the same employees because the authority over the substitute nurse rests solely with Napralla. It argues that even though Napralla spends a majority of her time doing non-supervisory duties, there are sufficient supervisory responsibilities to conclude that she is a supervisor.

The District insists that Napralla meets the final criterion because there is no one else who can supervise the substitute nurses or decide when substitutes will work and whether services provided by them are satisfactory. The District states that Napralla established the pay rate for the substitute nurses and informed the Principal as a matter of courtesy - not because she was obliged to do so.

The District submits that the Commission does not require all seven supervisory factors to be present but only that the factors must be present in sufficient number and degree. It maintains that Napralla exercises supervisory responsibilities in a sufficient combination and degree to make her a supervisor. It argues that the School Nurse position has the power to interview, hire and fire substitute nurses, and Napralla has exercised the power to interview and hire, and nothing else is required to be a supervisor. The District states that there is an ongoing evaluation of the substitute nurses even though there is no formal evaluation process, as Napralla determines the amount and frequency of training.

It concludes that when the authority of Napralla is compared to the statutory definition of a supervisor and the oft-repeated "seven standards", there is absolutely no question that Napralla is a supervisor, and should not be included in any bargaining unit.

Association's Reply

The Association states that it is clear that Napralla supervises no current regular full-time or part-time employees. It observes that although the School Nurse has hired substitute nurses, there is nothing else to the District's case. The Association insists this is not sufficient to exclude the position from the unit as a supervisor. The Association disputes the District's assertion that the School Nurse had authority to set the pay for substitute nurses and argues that the testimony supports the contention that the ultimate decision-maker was the Principal. The Association notes that the District makes much of the legal and medical issues surrounding Student M, but the record indicates the skills required are of a professional and medical nature and supervision in regard to Student M is of an activity, and not of employees. The Association reiterates its position that the School Nurse is a municipal employe and asks that the position be placed in the bargaining unit.

District's Reply

The District points out that the Association in its brief claims that Napralla does not supervise any employees of the District, but contends this is an absolute misstatement of fact, as the substitute nurses are employees of the District, though they are not in a bargaining unit. It

disputes the Association's argument that Napralla has to supervise teacher bargaining unit employes, as the Commission considers supervisory authority over non-unit employes sufficient for supervisory status.

The District disputes the Association's calculation of time the substitute nurses worked and argues that 13.89% is correct - which is greater than the 10% the Association claims the Commission requires. As to the alleged teacher involvement in the hiring of substitute teachers, the District contends that teachers merely are asked if they know of anyone interested in substitute teaching. The District argues this is far from establishing that teacher recommendations are followed for hiring purposes.

With respect to the Association's assertion that the District was relying on Napralla's medical knowledge, and not her expertise and background in a supervisory capacity, the District states that to say relying on a supervisor's knowledge and skills is not relevant in making a supervisory determination is to mislead the Commission. It also refers to Napralla's testimony that she was supervising Linna Hoffman, an aide.

The District contends that it is clear that Napralla is a supervisor, and should be excluded from the bargaining unit.

DISCUSSION

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

. . .any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes, 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 clerical or routine nature, but requires the use of independent judgment.

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

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employes;

5. Whether the supervisor is primarily 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.

We have consistently held that not all of the above factors need to reflect supervisory status for us to find an employee to be a supervisor. Our task therefore is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an employee to be a supervisor. See, for example, ONEIDA COUNTY, DEC. NO. 24844-F (WERC, 1/99).

This case presents a unique set of facts.

Viewed strictly in terms of the authority and independence of the School Nurse (criteria 1-3, 5 and 7 above), there would be no doubt that she is a supervisor. She has the independent authority to hire and fire substitute nurses and to direct and assign their work. She is the only District employee who exercises direct authority over the substitute nurses.

However, when viewed from the perspective of criteria 4 and 6, a different picture emerges. The School Nurse's level of pay reflects her nursing skills as opposed to her supervision. She spends the vast majority of her time performing her own duties.

Generally, this mix of facts would produce a determination that the School Nurse is a supervisor. As argued by the District, her hiring and disciplinary authority would typically be sufficient to overcome other facts that do not reflect supervisory status.

However, in this case, we conclude a supervisory result is not warranted because the employees supervised work so infrequently. During the eight months preceding the hearing, the substitute nurses only filled in for the School Nurse on five days – one day being the date of our hearing. We acknowledge that the substitute nurses also generally each work one day a month as part of their training/maintenance of skills. However, whether training or actually substituting, the reality is that there are no substitute nurses working on the vast majority of work days. 1/ Thus, on the vast majority of work days, the School Nurse has no employees to

1/ The absence of employees significantly distinguishes this case from the prior Commission decisions cited by the District.

supervise. Under such circumstances, we conclude that the School Nurse is not a supervisor.
2/

2/ In reaching this conclusion, we have considered the role played by the School Nurse in directing the work of aide Hoffman who does work every day. The Nurse does direct the portion of Hoffman's work that is related to providing health services/therapy to students and would report performance issues to Hoffman's direct supervisor. However, her limited role vis-a-vis Hoffman, even when combined with her authority over substitute nurses, is insufficient to establish supervisory status.

The parties have agreed that if the School Nurse is not a supervisor, it is appropriate to include her in the existing professional employe bargaining unit. Based on all of the foregoing, we have ordered her inclusion in that unit.

Dated at Madison, Wisconsin this 18th day of August, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commissioner A. Henry Hempe did not participate in this matter because, during the pendency of this case, he was serving the parties as a mediator.

