

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
SOUTH MILWAUKEE EDUCATION ASSOCIATION
Involving Certain Employees of
SOUTH MILWAUKEE SCHOOL DISTRICT

Case 47
No. 60028
ME-1028

Decision No. 30277

Appearances:

Mr. Troy Hamblin, Executive Director, Council #10 WEAC, 13805 West Burleigh Road, Brookfield, Wisconsin 53005, appearing on behalf of the South Milwaukee Education Association.

Ms. Jennifer L. Sielaff, Director of Personnel and Administrative Services, South Milwaukee School District, 1225 Memorial Drive, South Milwaukee, Wisconsin 53172, appearing on behalf of the South Milwaukee School District.

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

On June 11, 2001, the South Milwaukee Education Association filed a petition with the Wisconsin Employment Relations Commission to clarify an existing Association bargaining unit of South Milwaukee School District employees by including the position of Associate Principal for Activities and Athletics.

Examiner John R. Emery, a member of the Commission's staff, conducted a hearing on July 13, 2001, in South Milwaukee, Wisconsin, during which the parties presented evidence on whether the position in question is or is not appropriately included within the bargaining unit.

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It is the position of the Association that the position is appropriately included in the bargaining unit. It is the position of the District that the incumbent in the position is a supervisor and/or a managerial employee and should, therefore, be excluded from the unit.

The transcript was received by the Examiner on July 25, 2001, whereupon the record was closed as the parties elected not to file briefs.

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

FINDINGS OF FACT

1. The South Milwaukee School District, herein the District, is a municipal employer with offices at 1225 Memorial Drive, South Milwaukee, Wisconsin 53172.

2. The South Milwaukee Education Association, herein the Association, is a labor organization with offices at 13805 West Burleigh Road, Brookfield, Wisconsin 53005.

3. At all times material, the Association has been the certified exclusive bargaining representative for a unit described in the parties' 1999-2001 collective bargaining agreement as:

. . . non-supervisory full-time and regular part-time certified teaching staff, guidance personnel, school psychologists, and school social workers employed by the South Milwaukee Board of Education . . .

4. The parties' 1999-2001 collective bargaining agreement contains a co-curricular activity schedule denominated as Appendix A, which sets forth the method of appointments and compensation schedule for all co-curricular activities, including the positions of High School Athletic Director, Athletic Equipment Manager and Weight Club Director. Until the end of the 2000-2001 school year, these duties were fulfilled by a bargaining unit member and full-time high school faculty member named James Teff. Teff retired at the end of the 2000-2001 school year.

5. In the Fall of 2000, in anticipation of Teff's forthcoming retirement, the District determined to redesign the position of Athletic Director. The District created a new non-bargaining unit position, designated as Associate Principal/Activities and Athletics, and advertised the position in the Spring of 2001. The Associate Principal position is a 12 month position and has a salary range of \$65,000-\$72,000, whereas the previous Athletic Director received compensation of \$52,405 for the 2000-2001 school year, between salary and co-curricular add-ons.

A job description was created for the Associate Principal position, which lists the following duties:

PERFORMANCE RESPONSIBILITIES

STAFFING:	1.	In cooperation with the building principal, recruit, hire, supervise, provide staff development, and evaluate the athletic and activities staff.
	2.	Coordinate and administer personnel supervision at high school athletic/activity events.
	3.	Represent the administration in regulating the compensation level for athletics/activities personnel.
PLANNING:	1.	Coordinate and schedule the use of facilities for all building level activities including dressing rooms, gym use, and stadium use. Establish, monitor, and coordinate a school-wide calendar of events including: <ul style="list-style-type: none"> • Fall Activity Assembly • Fall Sports Awards Night • Winter Sports Awards Night • Spring Activity Assembly • Anything Goes Assembly • Spring Sports Awards Night • Academic Achievement Breakfast • National Coaches and Advisors Day Breakfast • High School Hall of Fame • Distinguished Service Award
	2.	Coordinate budgeting, purchasing, and inventory control.
	3.	Sign off on all athletic/activity materials, equipment, and supplies requests.
	4.	Monitor all fund raising activity requests.
	5.	Arrange for transportation services for athletic/activity events.
	6.	Coordinate the contracting of athletic officials with the athletic conference executive director.
	7.	Work with buildings and grounds staff and insure proper maintenance of athletic facilities.

	8.	Develop, implement, and monitor a system for: <ul style="list-style-type: none"> • Awards banquets • State tourney attendance • Athletic/activity eligibility • Training regulations • Crowd control • Safety • Uniform selection and purchase • Equipment use • Admission fees/complimentary passes • Fund raisers • Ticket sales • Code of Conduct • Practice schedules • Special events
	9.	Develop, implement, and monitor a system to maintain permanent records for each sport such as wins and losses, outstanding records, letterpersons, etc.
	10.	Act as the school liaison at athletic booster club meetings and serve as the liaison between the coaches and the athletic and activity booster clubs.
	11.	Develop a procedure to notify parents and students of all rules and regulations that apply to their participation.
	12.	Maintain and foster on-going relationship with the South Milwaukee Recreation Department.
SCHOOL/ COMMUNITY RELATIONS:	1.	Work closely with news media in providing before and after event information on all activities.
	2.	Assist in the development of programs which enhance and improve school pride and tradition including community participation in school events as spectators, participants, officials, and contest assistants.
	3.	Represent the school and act as the liaison at local, state, and national meetings.
	4.	Promote publicity for all interscholastic sports such as sport brochures, press and radio, etc. for all athletic events.

	5.	Supervise all radio and television broadcasts.
	6.	Coordinate the use of all facilities by groups outside of school.
	7.	Arrange for emergency personnel procedures for all home athletic events.
PROGRAM EVALUATION: PROGRAM EVALUATION (continued)	1.	Establish an on-going process to evaluate the effectiveness of the athletic/activity program.
	2.	Monitor current athletic/activity programs and make recommendations to the principal regarding proposals for new athletic/activity opportunities or the alteration of existing athletic/activity opportunities.
	3.	Coordinate the annual review of the athletic policy and activities staff handbooks.
DIRECT RELATIONSHIP WITH COACHES/ADVISORS:	1.	Prepare rosters and reports as required by the conference or state association.
	2.	Prepare regular game eligibility lists within established timelines as required by the state association.
	3.	Secure parents' consent cards, physical cards, and insurance forms from all participants.
	4.	Enforce all WIAA regulations.
	5.	Inform all coaches of all conference rules and regulations.
	6.	Supervise and observe coaches/advisors.
	7.	Maintain proper rapport with coaches/advisors.
	8.	Secure all needed personnel for the operation of the athletic program to include: <ul style="list-style-type: none"> • Game officials • Announcers • Time keepers • Score keepers • Ticket sellers • Security • Supervisors • Custodians • Concessions • Support personnel • Medical coverage
	9.	Collect all monies from athletic contests and deposit in appropriate accounts.
OTHER RESPONSIBILITIES:	1.	Perform other duties as assigned by immediate supervisor.

Ralph Henning was hired to fill the position and began his duties in July, 2001.

6. The Associate Principal/Activities and Athletics is one of three Associate Principals at South Milwaukee High School. Neither of the other Associate Principals is a member of the bargaining unit. Each of the other Associate Principals has specific duties that are unique to the position. One is assigned to oversee grades 9 and 10 and also to handle scheduling within the high school building. The other oversees grades 11 and 12 as well as the school's summer school program. The Associate Principal/Activities and Athletics will have no specific responsibility for overseeing particular grades within the school, but will, as needed, fill in for the other Associates or the Principal in their absence. He will also serve as the administration representative on a joint faculty/administration committee that sets the compensation levels for coaches and activity coordinators. The Principal and the three Associates form the school's administrative team, which meets weekly to discuss and plan the operation of the school.

7. The Associate Principal will have sole responsibility for making recommendations to the Principal for the hiring, appointment and discipline of persons directing the athletic and other co-curricular programs and activities offered by the high school. He will also supervise and evaluate the performance of the coaches, advisors and directors of student activities and will be the staff member responsible for developing an evaluative process for the school's athletic and other co-curricular programs. In all, the Associate Principal will be overseeing the work of over 100 persons involved in directing different sports or activities.

The Associate Principal will also directly supervise the work of one part-time clerical staff member. He will assign work to this employee on a daily basis and will have authority to oversee, evaluate and recommend discipline. Should the clerical position become vacant, he will be a participant in the hiring of a replacement.

The Associate Principal will also be responsible for obtaining referees, vendors, chaperones, security personnel and volunteers for school athletic events and activities and assigning their duties.

8. The Associate Principal/Activities and Athletics has supervisory duties and 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

1. The Associate Principal/Activities and Athletics, 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 upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission hereby makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The Associate Principal/Activities and Athletics shall continue to be excluded from the bargaining unit referenced in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of February, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

SOUTH MILWAUKEE SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The Association

The position of Athletic Director has been within the bargaining unit for over 25 years. The new position of Associate Principal/Activities and Athletics will function in much the same way as its predecessor in terms of hiring, discipline, budget and supervision. As before, the position will not have independent authority, but will have to refer all decisions to the Principal. Originally, the position was attached to a teaching position covered by the recognition clause and was listed in the appendix containing co-curricular duties. Over time the position changed somewhat in character, but has continued to function successfully in the bargaining unit and should not be disturbed. The District had other options, such as hiring a separate Activities Director, which it chose not to pursue and which could have left the Athletic Director position intact. The District's preference to remove the position from the bargaining unit, however, should not outweigh over 25 years of practice.

The District

The decision to create the position of Associate Principal/Athletics and Activities was made over a period of more than 1½ years, once the former Athletic Director announced his impending retirement. At the time of his retirement, the Athletic Director's duties were essentially administrative. The new position will have even greater administrative responsibility and will be operating under a 12 month contract, unlike the former Athletic Director and the other members of the bargaining unit.

The Associate Principal will enforce the athletic code, evaluate and supervise the athletics and activities staff, oversee an annual budget in excess of \$175,000, contract with outside vendors on behalf of the school and substitute for the other Associate Principals in their absence. The Athletic Director did not do these things. For all the foregoing reasons, the position should be excluded from the bargaining unit as a supervisor or a managerial employee.

DISCUSSION

With regard to the determination of whether an employee is a supervisor, Sec. 111.70(1)(o)1, Stats., defines a supervisor as an 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 judgement.

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 other 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 skill or for his/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 he spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98).

Although there are seven articulated factors, the Commission has consistently found that not all of the factors need to reflect supervisory status for an employee to be a supervisor. Rather, the Commission looks to determine whether the factors are present in sufficient combination and degree. Should the employee have sufficient supervisory responsibilities and authority, then even if the majority of their time is not spent performing supervisory functions, the employee is properly determined to be a supervisor. TAYLOR COUNTY, SUPRA.

When reviewing the factual record in the context of the statutory definition and the above-noted factors, we conclude the Association Principal is a supervisor.

As to Factor 1, the record establishes that the Associate Principal does not have any independent hiring or disciplinary authority. Thus, the critical questions becomes whether the Associate Principle has the authority to effectively recommend discipline or hiring.

This is a close question. Because the Associate Principal position is a new one, there is no track record to review. The job description explicitly states that whatever authority the Associate Principal possess is exercised "In cooperation with the building principal . . ." The

Principal's testimony clearly establishes that he ultimately makes the decision as to what disciplinary or hiring action he will recommend to the District's Personnel office and ultimately to the Board of Education. His testimony further establishes that it has yet to be established what role the Associate will play when filling any vacancy in the part-time clerical position.

While we are troubled by the implications of the Principal's testimony regarding the extent to which he will independently evaluate disciplinary recommendations, the Principal's overall emphasis on the high degree of reliance he will place on the Associate as to supervision and evaluation of employees persuades us that the Associate will effectively recommend discipline.

As to Factors 2-4, it is clear that the Associate has substantial authority to direct and assign employees, that he is the only one directly supervising the large number of coaches and activity directors, and that he is paid in part for his supervisory duties.

As to Factors 5-7, the Associate primarily supervises employees, spends a majority of his time doing so, and exercises independent judgment as to said supervision.

Given all of the foregoing, we have found the Associate Principal to be a supervisor. Should subsequent events establish that the Associate does not effectively recommend discipline or hiring, the Association can file another petition and we will revisit our determination.

Because we have concluded that the Associate Principal is a supervisor, we need not and do not consider the question of whether he is a managerial employee.

Dated at Madison, Wisconsin, this 7th day of February, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner