

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

MADISON TEACHERS, INC.

Involving Certain Employees of

MADISON METROPOLITAN SCHOOL DISTRICT

Case 321  
No. 72190  
ME(u/c)-1341

DECISION NO. 34973

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**Appearances:**

Linda L. Harfst, Cullen Weston Pines & Bach LLP, 122 W. Washington Avenue, Suite 900, Madison, Wisconsin 53703, appearing on behalf of Madison Teachers, Inc.

Malina R. Piontek, Attorney at Law, 7529 Crawling Stone Road, Madison, Wisconsin 53719, appearing on behalf of Madison Metropolitan School District.

**FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

On July 29, 2013, Madison Teachers, Inc. filed a petition with the Wisconsin Employment Relations Commission asking that eight Play and Learn Group Leaders employed by the Madison Metropolitan School District be included in a professional Madison Metropolitan School District employee bargaining unit that it represents. The District opposes the proposed inclusion because it asserts, contrary to Madison Teachers, Inc., that the Play and Learn Group Leaders are not professional employees and also fall outside the scope of the parties' contractual recognition clause.

Hearing was held in Madison, Wisconsin, on October 10, 2013, by Commission Examiner Peter G. Davis. The parties thereafter filed written argument by January 21, 2014.

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

**FINDINGS OF FACT**

1. Madison Teachers, Inc. (hereinafter “MTI”) is a labor organization.

2. The 2013-2014 collective bargaining agreement between MTI and the Madison Metropolitan School District (hereinafter “District”) states that MTI is the collective bargaining representative for:

All regular full-time and regular part-time certificated teaching and other related professional personnel who are employed in a professional capacity to work with students and teachers, employed by the Madison Metropolitan School District . . . .

3. The District employs eight Play and Learn Group Leaders to provide structured opportunities for children ages one to five and their parents (or guardians) to learn skills that will prepare the children to succeed socially and academically.

4. The work of a Play and Learn Group Leader does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

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

**CONCLUSION OF LAW**

The Play and Learn Group Leaders are not professional employees within the meaning of § 111.70(1)(L), Stats.

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

**ORDER**

The Play and Learn Group Leaders shall continue to be excluded from the bargaining unit described in Finding of Fact 2.

Dated at Madison, Wisconsin, this 11th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER**

Section 111.70(1)(L), Stats., defines a professional employee as:

(L) "Professional employee" means:

1. Any employee engaged in work:
  - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
  - b. Involving the consistent exercise of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employee who:
  - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d.;
  - b. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in subd. 1.

MTI, contrary to the District, asserts that the Play and Learn Group Leaders are professional employees within the meaning of the § 111.70(1)(L)1, Stats., portion of the definition. As is apparent from the statutory definition, it is the work of the employee that is measured against four statutory components. Although the parties disagree as to whether the Play and Learn Group Leaders meet any of components, we only find it necessary to analyze the fourth component (§ 111.70(1)(L)1.d., Stats.) when determining whether the Play and Learn Group Leaders are professional employees.

This fourth component focuses on how an employee usually gets the knowledge needed to perform the work. The statutory phrase "prolonged course of specialized intellectual instruction and study in an institution of higher education" found in this component has been interpreted to mean a four-year specialized degree. *City of Sun Prairie*, Dec. No. 20841-B (WERC, 10/86); *City of West Allis*, Dec. No. 13779 (WERC, 7/75). Therefore, if a four-year specialized degree is the usual source of the knowledge needed to perform the Play and Learn Group Leader's work, this fourth component of the statutory definition is satisfied.

Relevant evidence when analyzing the fourth component includes whether the employees performing the work have four-year specialized degrees and what the employer requires of successful applicants for the position. *Outagamie County*, Dec. No. 21143-A (WERC, 10/86). Also relevant is what other employers with employees performing this work require of successful applicants and what types of degrees, if any, their employees have. Only two of the eight Play and Learn Group Leaders have relevant<sup>1</sup> four-year specialized degrees. Therefore it is also evident that the District does not require such degrees when it hires Play and Learn Group Leaders.<sup>2</sup> The record also establishes that other area employers with Play and Learn programs do not require that employees have a four-year specialized degree.

However, even where, as here, the relevant objective evidence strongly supports a conclusion that the Play and Learn Group Leaders are not professional employees, our own evaluation of the knowledge / work issue can yield a different conclusion. *Outagamie County*, *supra*. It does not do so here. The Play and Learn Group Leaders provide parents / guardians with examples / skills they can use when preparing their children for success in formal education. In the process of doing so, the children in the program benefit from the activities that are being presented. We are persuaded that the knowledge needed to train the parents / guardians (and simultaneously benefit the children who are present) is not usually acquired by a four year specialized degree. Instead, life experience as supplemented by training materials usually provides the knowledge in question.

Therefore, we conclude the Play and Learn Group Leaders are not professional employees within the meaning of § 111.70(1)(L), Stats.

Dated at Madison, Wisconsin, this 11th day of April 2014.

#### WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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<sup>1</sup> One Leader (LaCross) has a four-year specialized degree in philosophy. We conclude, and there is no evidence otherwise, that such a degree does not provide any significant knowledge related to the Play and Learn Group Leader's work.

<sup>2</sup> The evidence establishes that the relevant four-year specialized degree held by one Play and Learn Group Leader (Loftus) was not a determinative factor when she was hired.