

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**RACINE EDUCATION ASSOCIATION**  
Involving Certain Employees of  
**RACINE UNIFIED SCHOOL DISTRICT**

Case 1  
No. 54328  
ME-848

**Decision No. 7053-H**

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Appearances:

**Robert K. Weber**, Attorney at Law, Weber & Cafferty, S.C., 704 Park Avenue, Racine, Wisconsin 53403, appearing on behalf of the Racine Education Association.

**Frank Johnson**, Executive Director/Counsel, Employee Relations, 2220 Northwestern Avenue, Racine, Wisconsin 53404-2597, appearing on behalf of the Racine Unified School District.

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

On January 18, 2002, the Racine Education Association filed a unit clarification petition with the Wisconsin Employment Relations Commission seeking to exclude two “Establisher/Teacher-Coordinator” positions at the Real Charter School from the teachers’ bargaining unit that it represents at the Racine Unified School District. The District opposes the employees’ exclusion from the bargaining unit because it disputes the Association’s contention that those teachers are either supervisors or managerial employees.

No. 7053-H

Hearing on the matter was scheduled for September 9, 2002, but no testimony was taken that day. Thereafter, hearing was twice scheduled and postponed. On August 28, 2003, a hearing in the matter was held in Racine, Wisconsin before Examiner Raleigh Jones, a member of the Commission's staff. On October 1, 2003, the parties took the deposition of James Linstroth. The Examiner received a copy of same on October 22, 2003.

The parties filed briefs by November 21, 2003, whereupon the record was closed.

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

### **FINDINGS OF FACT**

1. The Racine Unified School District, hereinafter the District, is a municipal employer which has its offices located at 2200 Northwestern Avenue, Racine, Wisconsin 53404-2597. The District operates a large number of elementary, middle and high schools. It also operates a number of special schools, including the Real Charter School where the two Establisher/Teacher-Coordinators at issue in this proceeding are employed.

2. The Racine Education Association, hereinafter referred to as the Association, is a labor organization and has its offices located at 1201 West Boulevard, Racine, Wisconsin 53405. It is the bargaining representative for the District's professional employees (hereinafter identified as the teachers' bargaining unit). There are about 1500 employees in the teachers' bargaining unit.

3. Al Clausen and Willie Maryland are currently in the teachers' bargaining unit and the subjects of this unit clarification case. Both are long-term teachers with the District. Clausen is a music teacher and Maryland is a physical education teacher and coach. Prior to moving to the Real School, both taught at Walden School which is a non-traditional combined middle and high school. While at Walden, Maryland was the Dean of Students. In that capacity, he worked with parents, teachers and students. Both are now at the Real School, a charter school, where they are teacher/coordinators. As teachers, they are paid pursuant to the salary schedule in the collective bargaining agreement between the District and the Association. As coordinators, they are paid pursuant to the extra-curricular rate schedule in that collective bargaining agreement (specifically, Sec. 18.15). There are a variety of coordinator positions in the District. Clausen and Maryland are paid at the "Magnet School Coordinator" rate. The "extra compensation ratio" for that coordinator position is .036.

4. Wisconsin state law permits the creation of charter schools. Charter schools are intended to provide an alternative to traditional schools. Charter schools are governed differently than non-charter schools. At charter schools, teachers, parents and students are

part of a governing board. That board exercises some of the responsibilities that are usually performed by principals at non-charter schools. Charter schools can be categorized as either instrumentality or non-instrumentality. The former (i.e. “instrumentality”) are part of the local school district while the latter (i.e. “non-instrumentality”) are independent of the local school district. Instrumentality charter schools are public schools which are allowed to operate outside the confines of some district regulations in exchange for meeting accountability goals.

5. In the late 1990’s, Clausen and Maryland petitioned the Racine Unified School District Board for permission to establish a charter school for dropouts to be called the Real School. They wrote the original charter school proposal. That proposal included a proposed budget for the school. Over the next three years, Clausen and Maryland negotiated with the School Board over their charter school proposal and program. During the course of these negotiations, numerous modifications were made in their proposal and program. In July, 2000, the School Board approved Clausen’s and Maryland’s request for the Real Charter School as an instrumentality of the District.

Clausen and Maryland are sometimes referred to as the “establishers” of the Real School. Both signed the original charter school contract which they negotiated with the School Board. That charter school contract was dated August 21, 2000. That document identified Clausen and Maryland as “teacher/coordinators” for the charter school. It also specified that since the Real School was an instrumentality of the District, the School would receive its administrative services from a “Person in Charge.” That document further specified that the “Person in Charge” of the Charter School would be the District’s Assistant Superintendent of Instruction.

6. Before the Real School opened, Clausen and Maryland solicited donations for the school. They also recruited students. They also obtained a site for the School to be located and helped oversee the remodeling of that facility. Clausen and Maryland wanted to pick who would teach at “their” school, but since the Real School was an instrumentality of the District, the teaching employees who work there are covered by the collective bargaining agreement between the District and the Association and District teachers who wanted to teach at the Real School transferred there through their seniority rights under that labor agreement.

7. The Real School is a combined middle and high school (6<sup>th</sup> through 12<sup>th</sup> grade). There are currently 14 teachers, one secretary and three custodians at the School. Its first year of operation was the 2000-2001 school year. In its first year, it had 60 students and operated only in the afternoons.

8. During the Real School’s first year of operation, there were many disagreements between Clausen and Maryland and the District’s administration over who was to control scheduling, staffing and curriculum at the Real School. Clausen and Maryland thought that

since they were the founders of the Real School, they were in charge of it. They sometimes referred to themselves as the Real School's co-directors. District officials did not consider Clausen and Maryland to be the building administrators or co-directors of the Real School; instead, they considered them to be teacher/coordinators in charge of the School's day-to-day operations.

9. Since its inception, the Real School has never had a principal or other administrator on site. Instead, the District Superintendent has assigned a District administrator to oversee the Real School in addition to their other assigned tasks. The administrator so assigned is, in the words of the charter school contract, the "Person in Charge". The administrator so assigned has never had an office at the Real School. The administrator so assigned was not expected to be present at the school every day. Instead, they were expected to do the things that teacher/coordinators cannot do, such as evaluate and discipline staff. Over the years, Clausen and Maryland clashed with these off-site administrators because they did not want anyone in an oversight position over them.

The first person who was assigned by the Superintendent to be the off-site administrator for the Real School (i.e. the "Person in Charge") was Assistant Superintendent for Instruction Warren Baugher. At the time (i.e. the 2000-01 school year), Baugher supervised all the secondary schools in the District and their principals. The part of Baugher's job dealing with the Real School was just a small part of his total job responsibilities. That first year, Clausen and Maryland had many disagreements with Baugher over what their role as teacher/coordinators was to be at the School. Specifically, Clausen and Maryland saw themselves as the building administrators, while Baugher did not. Baugher saw himself as the School's principal. Clausen and Maryland resisted Baugher's attempts to exercise supervisory authority at the School. As examples, Clausen and Maryland tried to bar Baugher from attending Real School building staff meetings and organized a petition to attempt to prevent Baugher from evaluating them or building staff. Clausen and Maryland eventually requested the District Superintendent to appoint someone other than Baugher as the School's off-site administrator. The Superintendent ultimately granted their request.

10. In the School's second year of operation, it changed from an after-school program to a full-time program. That same year, the School moved to a different location. Clausen and Maryland helped find the new site, and assisted another District employee in negotiating the lease. They also helped determine the classroom locations in the remodeled facility.

11. The second person who was assigned to be the off-site administrator for the Real School (i.e. the "Person in Charge") was Cecilia Holley. Clausen and Maryland also had disagreements with her over what their role as teacher/coordinators was to be. In an attempt to clarify their status at the School, Superintendent Tom Hicks wrote the following to Clausen and Maryland on November 14, 2001:

As coordinators you are expected to supervise the day to day operation of the Real School, but as bargaining unit members you are not expected to (and may not) perform the functions traditionally associated with the role of principal/administrator. . .

Your recent communications seem to carry a tone or suggestion that “your school” should be independent of any supervision or oversight by an official associated with RUSD. The picture you paint of the rules and operational elements you prefer seem more characteristic of a private school or non-instrumentality charter. . .

Until we have an opportunity to discuss these changes in the charter document, please be advised that I have directed Ms. Holley to provide the following administrative services for the REAL School:

- LEA representative for special education IEP’s
- Leadership in the area of security and safety issues and concerns
- Leadership for the school’s emergency response plan
- Budget development (with your input)
- On site, on call administrative support (as needed)
- Professional development activities connected to the district improvement plan (with your input)
- Attendance at some governance board meetings (by your invitation)
- General oversight of the Real School programs as the Superintendent’s representative

12. After Holley left the District’s employment, Baugher was again designated by the Superintendent to be the off-site administrator for the Real School for the 2002-03 school year. This time around, Baugher, Clausen and Maryland met in early September, 2002 and the three of them worked out who would handle what tasks at the Real School using a middle school principal’s job description as a guide. The tasks which Clausen and Maryland were to perform were the following: provide instructional leadership for the school staff; serve as the liaison between building staff and the off-site administrator; handle student discipline, including student suspensions up to five days; assist the school nurse and social worker in making investigations of absence due to extended illness or other health problems; inform staff members of the procedure to be followed in the event of an accident to any student or employee; insure that all curriculum materials are Board approved; draft a master schedule of students to classes; insure that all initial admissions are in accordance with Board policy; inform the District’s central office of serious cases of truancy, tardiness and discipline; requisition emergency repairs and supplies and equipment; submit an annual report of the

School's activity fund at the close of each school year; keep inventory of school equipment on the forms in the manner designated by the Business Office; contact parents and handle their complaints; channel appropriate publicity to the proper sources; develop, present and account for the School's budget expenditures each year; and submit semi-annual reports to the School Board regarding the School's progress.

The tasks which Baugher was to perform for the Real School were the following: evaluate the effectiveness of the instructional program; safeguard the health and safety of students; provide plans of action for fire, storm and other sudden danger and insure adequate training in the operation of such plans in accordance with State Statutes for such drills; evaluate all professional personnel at intervals as directed by the Superintendent; evaluate all other staff members at intervals as directed by the Superintendent; and assume any additional responsibilities as assigned by the Superintendent.

After Clausen, Maryland and Baugher agreed on the foregoing allocation of duties, the Superintendent approved it. Afterwards, the following written Memo of Understanding was prepared and signed:

#### **MEMO OF UNDERSTANDING**

To avoid the difficulties and confusion experienced in the first year of the charter, the following documents the roles of the coordinators and that of Warren Baugher.

The REAL School is an instrumentality of the Racine Unified School District and receives administrative services from the District. The charter outlines the nature of that administrative oversight responsibility. As coordinators, Al Clausen and Willie Maryland are expected to supervise the day-to-day operation of The REAL School. As bargaining unit members, the coordinators may not perform the functions traditionally associated with the role of principal/administrator. As Assistant Superintendent for Secondary Education, Mr. Baugher will provide the following administrative services to The REAL School:

- Evaluation of staff
- Evaluation of instructional program effectiveness
- LEA representative for special education IEPs
- Leadership in the area of security and safety issues and concerns
- Leadership for the school's emergency response plan
- Budget development (with coordinator input)

- On call administrative support (as needed)
- Professional development activities connected to the district improvement plan (with coordinator input)
- General oversight of the Real School programs as the Superintendent's representative

The coordinators in their day-to-day duties will continue to work directly with various Central Office staff and curriculum instructors as needed. They will also have the authority to initiate purchase orders and incur expenditures in the normal course of operating The REAL School within its budget parameters. In addition, the coordinators will receive copies of all correspondence or memos and will be included and advised of any decisions made at the District level regarding the school.

Dated: September 6, 2002

This agreement reduced Baugher's role at the Real School from what it had been previously. After the Memo of Understanding was signed, there were fewer difficulties between Baugher and Clausen and Maryland than there previously had been. In the 2002-2003 school year, Baugher seldom went to the Real School and was there, on average, about one hour a week.

13. The current charter school contract for the Real School was signed June 16, 2003. Article IV, Section B of that contract identifies the day-to-day responsibilities of the "teacher/coordinators" at the School (i.e. Clausen and Maryland). Specifically, it states they "will be responsible for scheduling classes, quarterly parent-teacher conferences, and all other issues involving day-to-day operations." Subsection C of that same article states that the "Person in Charge", who is designated by the Superintendent, has final power and authority regarding "any of the above-described decisions." Article V states that the "Person in Charge" has all the duties and responsibilities associated with a school principal.

14. As of the time of the hearing, the Real School was starting its fourth year of operation. It now has an all-day program and 200 students (the same as the previous year). As of the time of the hearing, the person who had been assigned by the Superintendent to be the off-site administrator for the Real School (i.e. the "Person in Charge") for the 2003-04 school year was José Martinez. Sometime after the hearing and before October 1, 2003, the Superintendent changed the person who was to be the off-site administrator for the Real School (i.e. the "Person in Charge") to Bob Holzum. Holzum is the principal at Walden School.

15. Since the Real School is an instrumentality of the District, the District provides all financial services including, but not limited to, accounting, payroll and the annual audit.

While Clausen and Maryland created a budget for the Real School before it opened, they have not done so since then. The Real School's annual budget (which is 1.2 million dollars) is now created and prepared by Robert Stepien, the District's Business Manager. After an initial budget has been prepared by Stepien, the Real School's governing board (which includes Clausen and Maryland) reviews it and comments on it, before it goes to the School Board for approval. The Real School uses the District's purchasing system and general payroll system. Clausen and Maryland do not certify payroll reports.

16. Clausen and Maryland help coordinate transportation for the students at the Real School. They also oversee student field trips.

17. Clausen and Maryland do not control enrollment numbers at the Real School; the Superintendent does that. Clausen and Maryland do decide who to accept as students at the School. While Clausen and Maryland recruited students for the School in its first year of operation, they do not do so anymore.

18. Clausen and Maryland do not attend the principal meetings that are held throughout the year at the District's central office.

19. Clausen and Maryland are in charge of fire drills at the School and planning for the building's evacuation.

20. Clausen and Maryland prepare the master schedule for the School's teachers. They schedule classes and quarterly parent-teacher conferences.

21. Clausen and Maryland, along with the President of the School's governing board (a parent) prepare semester reports for the School Board which identify student achievement, student discipline and budget expenditures.

22. If a teacher at the Real School needs time off, they make the request through the off-site administrator. A computerized call-in substitute system handles such requests and are initiated by the absent teacher. On occasion, Clausen has asked someone on the substitute list to substitute for an absent teacher.

23. If a teacher at the Real School wants to request equipment or supplies, they fill out a requisition form and then the school's secretary sends the request to the District's central office.

24. No teachers at the Real School have ever been disciplined. If they were, the discipline would not be imposed by Clausen or Maryland; instead, it would come from the off-site administrator. That would also be the case with support staff employees who work at the School.



25. No teacher at the Real School has ever filed a grievance under the parties' collective bargaining agreement. If they did, Clausen and Maryland would not respond to it; instead, the formal response would come from the off-site administrator.

26. District teachers sometimes participate on hiring interview committees. One time, Clausen sat on an interview committee, but he did not ask any questions during the interview.

27. All of the teachers at the Real School have input in deciding what courses are taught. Clausen and Maryland cannot change the District's curriculum content.

28. All of the teachers at the Real School have input into deciding what topics are covered at in-services. In-services are not controlled by Clausen and Maryland, but they coordinate them.

29. While all teachers at the Real School can discipline students, only Clausen and Maryland can suspend them. Clausen and Maryland have imposed suspensions of five days or less on students.

30. Clausen and Maryland, like all the other full-time teachers at the Real School, teach five class periods each day. That is considered a normal full-time teaching load in the District. Clausen and Maryland spend the remainder of the day (about two hours) overseeing the School's day-to-day operations. During that time, they deal with student discipline, parental concerns and physical plant matters. If a physical plant matter arose, they would contact a building custodian regarding same.

31. Clausen and Maryland do not possess supervisory duties and responsibilities in sufficient combination and degree to be supervisors.

32. Clausen and Maryland do not sufficiently participate in the formulation, determination and implementation of District policy or have sufficient authority to allocate District resources to be managerial employees.

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

### **CONCLUSION OF LAW**

Al Clausen and Willie Maryland are not managerial employees within the meaning of Sec. 111.70(1)(i), Stats., or supervisors within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore are municipal employees 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**

Al Clausen and Willie Maryland shall continue to be included in the teachers' bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of February, 2004.

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

**RACINE UNIFIED SCHOOL DISTRICT**

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

**POSITIONS OF THE PARTIES**

**Association**

The Association contends that Clausen and Maryland should be excluded from the teachers' bargaining unit. According to the Association, they exercise administrative, managerial and supervisory duties that are greater than those exercised by building principals. In its brief, the Association does not analyze the categories of supervisory and managerial status separately; rather, it cites certain record evidence and avers that when that evidence is considered collectively, it establishes that Clausen and Maryland exercise sufficient managerial and supervisory duties to exclude them from the teachers' bargaining unit.

For the purposes of context, the Association notes that Clausen and Maryland were the founders of the Real School who wrote the original charter school proposal, formulated its program and obtained School Board approval. The Association maintains that in the three years that it took to get the Board's approval, Clausen and Maryland negotiated with the School Board over many aspects of the School and how it would operate. According to the Association, during that time, Clausen and Maryland negotiated with the Board over their own leadership positions at the School and how the School would operate. The Association also calls attention to the fact that they helped find a site for the School, negotiate its lease and oversee the remodeling of that building. Additionally, before the School opened, they solicited funds for the School and recruited its first students.

Next, the Association acknowledges that Clausen and Maryland teach five classes per day. Clausen himself estimated that he spends five hours a day teaching and two hours a day doing non-teaching duties. However, as the Association sees it, the time they spend teaching should not determine their status. The Association maintains that what should determine their status is their involvement in supervisory and managerial matters. The Association notes that in WATERTOWN SCHOOL DISTRICT, DEC. NO. 12816-B (WERC, 6/76), the Commission found that the part-time principals involved therein were supervisors. According to the Association, Clausen and Maryland are analogous to the part-time principals who were found to be supervisors. The Association contends that when Clausen and Maryland are not teaching, their non-teaching duties extend far beyond the education of students. To support that premise, the Association asserts they also "coordinate student recruitment", "set staffing levels", develop extra-curricular activities, coordinate in-service programs, make student suspension decisions, draft a master schedule, arrange for substitute teachers, "resolve student transportation problems", and deal with parental concerns.

The Association argues that while the District has made a pretext of assigning a district administrator to oversee the Real School, it is Clausen and Maryland who, for all intents and purposes, autonomously run the School's day-to-day operations. To support that premise, it notes that when Warren Baugher was the oversight administrator for the Real School, he spent less than one hour a week at the School because of his numerous other duties. It also notes that Clausen and Maryland barred Baugher from attending building staff meetings and organized a petition to attempt to prevent Baugher from evaluating the building staff. The Association avers that these instances show that even when an oversight administrator has attempted to exercise supervisory control at the Real School, Clausen and Maryland vociferously and effectively resisted it.

The Association also believes it is significant that the District Superintendent has explicitly authorized Clausen and Maryland to exercise many of the job responsibilities that are listed on the job description for a secondary school principal in the District. It explicitly notes that Clausen and Maryland have been assigned the following principal job responsibilities: provide instructional leadership for school staff; suspend students for up to five days; insure that all curriculum materials are Board approved; inform the central office of serious truancy, tardiness and discipline cases at the School; and requisition emergency repairs and supplies and equipment. The Association avers that since these job responsibilities are traditionally reserved for school administrators, this establishes that Clausen and Maryland are administrators.

Turning to budgetary matters, the Association acknowledges that the Real School's budget is now prepared by the District's business office. Be that as it may, the Association emphasizes that Clausen and Maryland still review the budget (as members of the Real School's governing board), prepare monthly expenditure reports for the School Board, and initiate purchase orders.

In conclusion, the Association maintains that no matter what their title, Clausen and Maryland are essentially building administrators because they do what principals do: they discipline students, handle parent complaints, direct the work of the support staff, do scheduling and in-services, and work far in excess of the normal school day without receiving any overtime. The Association therefore asks that Clausen and Maryland be excluded from the teachers' bargaining unit.

### **District**

The District admits that Clausen and Maryland perform some job functions that are commonly associated with supervisors and managers, but it argues that like other similarly situated employees, they do not exercise sufficient supervisory or managerial authority to exclude them from the teachers' bargaining unit. It elaborates as follows.

First, the District addresses the claimed supervisory status of Clausen and Maryland by examining the traditional indicia of supervisory status. With regard to their ability to hire, the District avers there is no evidence they can do so. It acknowledges in this regard that Clausen once observed an interview, but it submits that observing an interview is not the same as being able to hire. With regard to their ability to transfer, the District avers there is no evidence that they ever transferred a teacher or have the authority to do so. It contends that in the District, teachers at the Real School are selected on a seniority basis by the Human Resources Department – not by the coordinators. With regard to their ability to discipline, suspend or discharge, the District avers there is no evidence that they ever disciplined, suspended or discharged a teacher or employee or have the authority to do so. With regard to their ability to layoff or recall, the District avers there is no evidence that they ever laid off or recalled an employee or have the authority to do so. With regard to their ability to promote, the District avers there is no evidence that they ever promoted a teacher or employee or have the authority to do so. With regard to their ability to assign, the District avers there is no evidence that they ever assigned a teacher or have the authority to do so. It notes in this regard that Maryland testified that teachers decide their own classroom assignments among themselves. With regard to their ability to reward, the District avers there is no evidence that they ever rewarded a teacher, monetarily or otherwise, or have the authority to do so. With regard to their ability to adjust grievances, the District avers there is no evidence that they ever adjusted grievances or have the authority to do so. It notes in this regard that no grievance have ever been filed and that Maryland testified that if they were, the grievances would be handled by an administrator. Given all of the foregoing, the District argues that Clausen and Maryland do not exercise supervisory authority.

Next, the District addresses the claimed managerial status of Clausen and Maryland. First, it notes that they spend two-thirds of each workday (five class periods) teaching. Second, with regard to the School's budget, the District avers that the budget is primarily developed by the District's Business Manager and Superintendent; afterwards, Clausen and Maryland, as board members, as well as the School's teachers, give their input regarding same. Third, the District avers that there is no evidence that Clausen and Maryland ever committed the District's financial resources, or have the authority to do so. Fourth, the District avers that the fact that Clausen and Maryland were the original establishers of the Real School and serve on its governing board does not make them managers.

In conclusion, it is the District's view that the supervisory and/or managerial duties that Clausen and Maryland perform are minimal and not sufficient to exclude them from the teachers' bargaining unit. The District believes Clausen and Maryland are first and foremost teachers, since that is what they are mainly paid to do; their coordinator work is secondary to their teaching work. The District therefore asks that Clausen and Maryland remain included in the teachers' bargaining unit. If the Commission finds to the contrary, the District requests that the Commission specifically identify which tasks it is that disqualify Clausen and

Maryland from the bargaining unit so that the District may direct those employees to cease performing those tasks.

### **DISCUSSION**

This case involves the question of whether two charter school teacher/coordinators should be excluded from the teachers' bargaining unit. The Association alleges that long-term teachers Al Clausen and Willie Maryland are supervisors and/or managerial employees, and therefore not municipal employees within the meaning of Sec. 111.70(1)(i), Stats. We hold that, while both employees perform some job functions commonly associated with supervisors and/or managers, they do not exercise sufficient supervisory or managerial authority to be excluded from the teachers' bargaining unit.

#### **Are Clausen and Maryland Supervisors?**

When determining whether an employee is a supervisor, we apply Sec. 111.70(1)(o)1, Stats., which 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 judgment.

When interpreting this statutory language, we consider the following:

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).

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 appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01). The evidence presented by the parties establishes that there is a substantial similarity among the two employees at issue. That being so, we will analyze their status together.

As to Factor 1, we conclude that Clausen and Maryland do not effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. Regarding hiring, the record indicates that teachers sometimes serve on interview committees. Clausen once did this. However, even in that instance, there is no showing that Clausen recommended whom to hire. That being so, the record evidence does not establish that Clausen and Maryland make hiring decisions on their own volition or effectively recommend same. Regarding transfers and promotions, Clausen and Maryland play no role whatsoever with regard to those decisions; any transfers and promotions would be handled by the District's Human Resources staff. Regarding discipline, suspension and discharge, the record clearly establishes that Clausen and Maryland are not empowered to impose or effectively recommend employee discipline of any kind. Thus, they have no disciplinary authority over employees. While they can report performance problems to the off-site administrator (i.e. the "Person in Charge"), the administrator would decide what employee disciplinary action to take.

Looking at Factor 2, the record indicates that Clausen and Maryland do not direct or assign work to either the other teachers or the support staff at the school. If Clausen and Maryland have a concern about how a teacher or support staff member does their work, they could report it to the off-site administrator, but the administrator would decide what action to take. Clausen and Maryland do not approve leave requests, function as the first step management representative under the contractual grievance procedure, or conduct employee evaluations. Additionally, Clausen and Maryland do not attend the principal meetings that are held throughout the year at the central office.

As to Factor 3, there are 18 employees assigned to the Real School.

Looking at Factor 4, Clausen and Maryland are paid pursuant to the teacher salary schedule in the collective bargaining agreement between the District and the Association. As coordinators, they are paid pursuant to the Magnet School Coordinator extra-curricular rate schedule in that same agreement. That additional pay compensates them for their coordinator duties – not for supervising employees.

Looking at Factors 5 and 6, it is apparent that, since Clausen and Maryland have the same teaching load as full-time teachers do (i.e. five classes), they spend the majority of each workday teaching. When they are not teaching, they oversee the School's day-to-day operation. In this latter capacity, they oversee an activity – the School's daily operation – as opposed to overseeing the employees who work there.

Regarding Factor 7, we are persuaded that overseeing the School's daily operation involves the exercise of substantial independent judgment. However, as was previously noted, that judgment does not involve the supervision of employees.

Given all the foregoing, we conclude that Clausen and Maryland are not supervisors within the meaning of Sec. 111.70(1)(o)1, Stats. They have no authority in hiring and employee discipline and spend the majority of their time teaching.

### **Are Clausen and Maryland Managerial Employees?**

A “managerial” employee is specifically excluded from the definition of “municipal employee” found in Sec. 111.70(1)(i), Stats. However, because there is no statutory definition of a “managerial” employee, that term has been defined by the Commission through case law. With judicial approval, the Commission has defined a “managerial” employee by considering the extent to which the employee participates in the formulation, determination and implementation of management policy or possesses the authority to commit the employer's resources. CITY OF MILWAUKEE V. WERC, 71 WIS. 2D 709 (1976); VILLAGE OF WHITEFISH BAY, 103 WIS.2D 443 (CT. APP. 1981); KEWAUNEE COUNTY V. WERC, 141 WIS.2D 347 (CT. APP. 1987); MANITOWOC COUNTY V. LOCAL 986A, 170 WIS.2D 692 (CT. APP. 1992); COUNTY OF EAU CLAIRE V. AFSCME LOCAL 2223, 190 WIS.2D 298 (CT. APP. 1994). To confer managerial status, the employee's policy role must be “at a relatively high level” MARINETTE COUNTY, DEC. NO. 26154-B (WERC, 3/92), or the employee's authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the municipal employer's operations. VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88). Applying these general principles to this case, we find that Clausen and Maryland are not managerial employees.

First we note that Clausen and Maryland were the founders and establishers of the Real School. They were responsible for obtaining School Board approval of the Real School as an instrumentality of the Racine School District. However, that does not mean that they are “in charge” of the School. In practice, they are not currently in charge of the School, nor have they ever been. Pursuant to the charter school contract, the “Person in Charge” has always been an off-site district administrator. The fact that Clausen and Maryland have clashed repeatedly with the School's off-site administrator is not evidence that the off-site administrator was not in charge.



There is no question that Clausen and Maryland have some significant duties. They are board members of the School's governing board; they handle student discipline, including student suspensions up to five days; they respond to parental complaints; they coordinate employee in-services; they draft a master schedule of classes; they sometimes arrange for substitute teachers; they decide who to accept as students at the School; and they offer input into the School's budget before it is approved by the School Board. However, these duties are not sufficient to make them managerial employees. While Clausen and Maryland may have engaged in significant formulation, determination and implementation of management policy relative to the creation of the Real School, that occurred before the School opened. The School is now in its fourth year of operation.

Second, Clausen and Maryland do not have significant authority to commit the District's resources. They do not create the budget each year, nor do they allocate funds from it for differing program purposes on their own volition. The School's annual budget is now created and prepared by the School's Business Manager. The District's Business Office provides all financial services for the School.

Given the foregoing, we conclude that Clausen and Maryland are not managerial employees within the meaning of Sec. 111.70(1)(i), Stats. Having found that Clausen and Maryland are neither supervisors nor managerial employees, they are to remain in the teachers' bargaining unit.

Dated at Madison, Wisconsin, this 19th day of February, 2004.

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

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