STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of CESA #12 EMPLOYEE COUNCIL Involving Certain Employes of COOPERATIVE EDUCATIONAL SERVICE AGENCY #12	Case I No. 31447 ME-2206 Decision No. 20944-A

Appearances:

Ms. Priscilla Ruth MacDougall, Staff Counsel, and Mr. Timothy Laux, Law Clerk, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Petitioner.

Isaksen, Lathrop, Esch, Hart & Clark, Attorneys at Law, by Mr. Michael J. Julka, 122 West Washington Avenue, P. O. Box 1507, Madison, Wisconsin 53701, appearing on behalf of the Employer.

FINDINGS OF FACT, CONCLUSION OF LAW AND DIRECTION OF ELECTION

CESA #12 Employee Council having, on April 13, 1983, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all professional employes in the employ of Cooperative Educational Service Agency #12; hearing in the matter having been conducted in Portage, Wisconsin, on August 15, 16 and 17, September 13, and October 6 and 26, 1983, before Examiner Raleigh Jones; a transcript of the proceedings having been provided to the Examiner and the parties on November 16, 1983; briefs and reply briefs having been received by May 14, 1984; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That CESA #12 Employee Council, hereinafter referred to as the Petitioner, is a labor organization and has its offices at 214 West Cook Street, P. O. Box 192, Portage, Wisconsin 53901.

2. That Cooperative Educational Service Agency #12, hereinafter referred to as the Employer, is a municipal employer with offices at 626 East Slifer Street, Portage, Wisconsin 53901.

3. That in the petition initiating the instant proceeding, the CESA #12 Employee Council sought an election to determine whether the employes in the following alleged appropriate unit desired to be represented by it for the purposes of collective bargaining:

> All regular part time and full time professional employees employed by CESA, excluding confidential, supervisory, managerial and non-professional personnel.

4. That at the hearing herein, the Petitioner amended its petition to the following alleged appropriate unit:

> All professional employes whether regular full-time or regular part-time employed by the CESA No. 12 Board of Control excluding the Agency Administrator, Assistant Agency Administrator, Federal Project Coordinator, Director of Special Education, classroom teachers and all other data processors, accounting personnel, special education aides, technicians, paraprofessionals, and any supervisory, managerial or confidential employes of CESA 12.

5. That the Employer suggests that the following unit would be appropriate for collective bargaining:

> All professional Portage Project employes, excluding all non-professional, managerial, supervisory, and confidential employes of CESA 12;

that because the Employer claims that the Portage Project team leaders are managerial/supervisory employes and that the materials development specialist is a non-professional employe, the Employer's proposed unit effectively consists of Portage Project training specialists; that the only position the parties agree to include in either proposed bargaining unit is the training specialist; and that the remaining seven (7) classifications filled by ten (10) employes in the Petitioner's proposed bargaining unit are challenged by the Employer on the grounds they are supervisory, managerial, non-professional or lack a community of interest with the training specialists.

6. That the Employer opposes the inclusion of the four (4) team leaders, the Chapter I program director, the human growth and development coordinator, the SEIMC specialist/coordinator of film library and the instructional micro computer specialist on the grounds that these positions are supervisory and/or managerial; and that the Petitioner seeks their inclusion in their proposed bargaining unit.

7. That the Employer, contrary to the Petitioner, contends that the employes occupying the positions of materials development specialist and instructional micro computer specialist are not professional employes and therefore should be excluded from the Petitioner's proposed bargaining unit.

8. That the Employer opposes the inclusion of the Chapter I program director, the human growth and development coordinator, the SEIMC specialist/coordinator of film library, the instructional micro computer specialist and the special education program support teacher into the Employer's proposed bargaining unit on the grounds that these positions lack a community of interest with the Portage Project training specialists position.

9. That the Employer contends, contrary to the Petitioner, that the team leaders are managerial and supervisory employes; that team leaders work with training specialists in small educational support teams; that these teams range in size from three to five persons; that at times, however, a team has consisted of one (1) team leader and one (1) training specialist; that the jobs of all four (4) team leaders are essentially the same; that the job description of the position uses the word "supervision" twice in reference to authority over members of the team; that team leaders are responsible for developing and implementing programs and activities as part of the Early Childhood Program; that they draft grant proposals for submission to federal funding agencies and submit required progress reports; that team leaders do not sign grant proposals, nor do they oversee the federal money that is received; that although each team decides which programs it wishes to undertake, some projects are continued from year to year; that the teams develop their own programs, from overall aims to specific events and activities; that task responsibilities among the team members are divided by a joint discussion process in which the team members take into consideration their own interests and project goals, and then a joint decision is made regarding the implementation of a project's tasks; that team leaders have been involved in the interviewing of applicants for training specialist positions; that at these interviews, the team leaders communicated the salary range and fringe benefits offered, but could not indicate the exact wage that a candidate would receive if hired; that this interviewing was done by committees of team leaders in which differences of opinion regarding candidates were resolved by a vote; that after a joint decision was arrived at by the committee, a recommendation was made to Gundlach, the assistant agency administrator and early childhood director, who then reviewed the applications separately and sometimes interviewed the applicants again; that, on at least one occasion, Gundlach's predecessor rejected a candidate's recommendation by a team leader, although Gundlach has not; that team leaders do not have the authority to hire on their own, but once a training specialist is hired, they are trained by the team leaders; that team leaders do not have the authority to discharge or suspend any employe, as this authority rests with the Board of Control; that all vacation leave and sick leave is handled by the bookkeeping department or governed by Agency policy; that although a teaching specialist may notify his/her team leader of an absence or leave, it appears this is a courtesy rather than a requirement; that team leaders review the expense vouchers of training specialists, sign them, and turn them over to Gundlach; that team leaders have

given verbal correctives and admonishments to training specialists; that examples include Zeger's telling an employe to use the proper procedure regarding car rental and Wolfe's telling an employe to get a better understanding of the work material; that the record also reveals two (2) instances where team leaders encountered what they considered was substandard work performance by probationary training specialists on their team; that in the first instance, Wolfe decided on her own to meet with the employe and worked with that employe to correct job deficiencies; that when the employe's probationary period was up, Gundlach asked for and received Wolfe's recommendation that the training specialist's job performance had improved sufficiently to warrant advancement to post-probationary status; that in the second instance, Zeger recommended to Gundlach that the employe be fired before her probationary period was due to expire; that this recommendation was not followed, but rather the employe was retained on an extended probationary period and later resigned; and that the team leaders do not participate to a significant degree in the formulation, determination or implementation of management policy nor do they perform duties in sufficient degree or combination to be supervisors.

10. That the Employer contends, contrary to the Petitioner, that the Chapter I program director (Gordon Ness) as well as the human growth and development coordinator (Joyce Unke) are managerial and supervisory employes, and lack a community of interest with the training specialists; that Ness and Unke occupy a level of authority in the CESA 12 chain of command comparable to early childhood director Gundlach, special education director Hawkinson, and data processing director Eid, none of whom are proposed for inclusion; that both report directly to agency administrator Durst and serve as sole directors and employes for their programs, although a secretary works with Ness; that both also spend half of their time at the CESA 12 office and the remaining time visiting school districts; that the Chapter I program is funded by grants from the federal government, while the Human Growth and Development program is funded by grants from the Wisconsin Department of Public Instruction (DPI); that neither Ness nor Unke formulate or implement federal, state or CESA policy regarding their programs, but once the local school districts decide to implement that policy decision, then Ness and Unke provide the pre-established information necessary to meet guidelines for the successful operation of the program; that neither Ness nor Unke decides whether the local school districts will apply for the grant monies; that Ness shares his knowledge of federal regulations and guidelines with the districts, monitors local district compliance with those guidelines and generally assists the local school districts in meeting their obligations under the federal Chapter I program; that Ness conducts centralized workshops and on-site teacher training although he utilizes outside consultants for 80% of the presentations; that Ness trains teachers how to study the results of different tests which are administered to children and how to determine the individual planning for a specific child; that Ness is not required by CESA 12 or the local school districts to observe teacher performance, but at the request of certain districts, he provides written evaluations of Chapter I teachers' classroom performance and participates in conferences at which his evaluation reports are discussed with the teachers; that there is no indication that any recommendation Ness provides at these conferences has any effect on a teacher's continued employment; that Ness spends 80% of his time observing and monitoring the Chapter I program and working with teachers, teacher aides, parents of Chapter I children and administrators; that Ness spends 20% of his time developing and revising school district's Chapter I budgets and federal grant applications which are revised as the federal grants are received; that these grant applications, budgets and budget revisions are submitted to the DPI before going to the federal government and amounted to about $600,000 in the 1983-84 school year; that a portion of the school districts' Chapter I grant (specifically 5.9%) is returned to CESA 12 to fund the administrative cost of CESA 12's Chapter I program (about $32,000); that Unke's part-time position is that of a resource contact person for school districts seeking information and methods of integrating human growth and development concepts into the school district curriculum; that she acts as a facilitator, coordinator and a presenter of inservice programs; that Unke annually develops a budget, sets goals and evaluation strategies, and submits a grant application to DPI in order to secure state approval of the CESA 12 Human Growth and Development Program; that this application must conform to DPI Human Growth and Development budget procedures and must have prior approval of the CESA administrator; that both Ness and Unke hold teacher certifications from DPI; that neither Ness nor Unke possess effective authority to hire, promote, transfer, discipline or discharge employes in CESA 12 or in the local school districts; that neither Ness nor Unke have the authority to commit CESA 12's resources; and that Ness and Unke do not perform duties in sufficient degree or combination to be supervisors, nor do they participate to a significant

degree in the formulation, determination or implementation of CESA 12 managerial policy.

11. That the Employer contends, contrary to the Petitioner, that the SEIMC specialist/coordinator of film library is a supervisory employe and lacks a community of interest with the training specialist; that the occupant of this position (Shaffer) originally held only the SEIMC position in which she was responsible for the Employer's collection of special education instructional materials; that in January, 1983, the position was consolidated and Shaffer assumed responsibility for the general purpose film library as well; that Shaffer trains new employes in the film library; that in her role as SEIMC specialist, Shaffer spends half of her time on the road visiting CESA 12 school districts where she observes and consults with special education teachers and also demonstrates the instructional materials available through CESA 12 to both students and teachers; that her job description contains the following reference to supervisory responsibilities: under a heading entitled "Examples of Work," the document reads: "supervise media center staff" and under the heading "Qualifications" the document calls for the "ability to supervise work of others"; that the record reveals three instances relevant to the issue of Shaffer's ability to hire, promote, transfer, discipline or discharge employes; that in the first occasion 4 years ago, Shaffer and the then director of the film library moved a clerical employe from the SEIMC to the film library when a film library employe resigned; that on the second occasion, Shaffer was involved in a decision, authorized by the Agency administrator, to switch a clerical employe from the SEIMC to the film library; that Shaffer considered this employe's performance inadequate, so she met with Durst to discuss the personnel matter; that Durst recommended a course of action to deal with the situation that included placing the employe on a month's probation, with Shaffer monitoring the employe's performance during that probationary period and documenting any deficiencies the employe may have; that following her meeting with Durst, Shaffer met with the employe, explained the problem to her, informed her that she would be on probation for a month, and if her job performance did not improve, she would be terminated; that during the month, Shaffer reviewed the employe's work and took notes of her job performance which she kept in her desk drawer; that Shaffer did not report the employe's progress to Durst during the month; that at the end of the month, Shaffer told the employe that she had noted improvement in her job performance; that thereafter, Shaffer notified the employe that she was off probation, although the record does not indicate whether this was on Shaffer's or Durst's instructions; that the third occasion arose in August, 1983, during the course of this hearing; that a media center clerical employe who was dissatisfied with her assigned hours brought her complaint to Shaffer; that Shaffer attempted to have Durst talk to the employe regarding the matter, but Durst told Shaffer to handle the matter herself; that when Shaffer was unable to adequately address the employe's concern, the employe resigned; that thereafter, Durst told Shaffer to replace the clerical employe; that Shaffer then talked to administrative assistant Huggett regarding filling the vacancy, and Huggett recommended Barbara Crawford as a replacement; that assistant administrator Gundlach also concurred with the recommended replacement; that Shaffer called Crawford to inquire about her availability to work on a temporary basis, and Crawford subsequently accepted the position; that Shaffer testified she did not interview Crawford; and that the SEIMC specialist/coordinator of the film library does not possess supervisory duties and responsibilities in sufficient combination and degree to be a supervisory employe.

12. That the Employer contends, contrary to the Petitioner, that the materials development specialist, Margarite Stine, is not a professional employe; that the materials development specialist position consists of three major areas of responsibility; that the first portion of the job consists of graphic design/editorial/production, and occupies approximately 80% of Stine's time; that in response to a request for materials, Stine ascertains from the staff what is desired, and then she makes such items as transparencies, flyers, brochures, videotapes and slide tapes; that in the process of developing these materials, Stine writes and edits copy, checks for typographical errors, mechanical fit and clarity of expression; that she receives approval of her proposals for copy, design and layout both from the staff member requesting the materials and from the project director, and she regularly submits alternative designs to them for their choice; that Stine makes no changes whatsoever in final copy without prior authorization from the author; that she also creates graphic designs and prepares layouts for reproduction, which may be done by outside printers or by use of CESA 12's own equipment; that the second portion of the job consists of interpreting for Spanish-speaking visitors and for home teachers serving bilingual families; that she also translates letters from Spanish into English and vice versa for

staff members; that this area of responsibility occupies approximately 10% of Stine's time; that the third portion of her job consists of clerical and public information duties, and occupies less than 10% of Stine's time; that the clerical work consists of general correspondence and report distribution while her public information duties include responding to requests for information by drafting letters in English and Spanish and forwarding materials to inquirers; that the job description of the position provides that the incumbent's responsibility is to coordinate the development and preparation of graphics, typing, editing, printing and publication of CESA 12 materials; that the "training and experience" section of the position's job description offers two alternatives; that to meet the first alternative, a candidate must possess a bachelor's degree in (a) art education, or (b) communications and journalism, or (c) a related discipline, plus three years of work experience in the field of the candidate's degree; that, in addition, Spanish language fluency is preferred; that to meet the second alternative, any combination of training and experience providing the required knowledge, skills and abilities will do; that Stine has received university level training in art at the University of Illinois, the Art Institute of Chicago, the International Institute of Madrid, the University of Malaga, and the Madison Area Technical College, although she does not have a bachelor's degree or a teaching certificate; that she has taught English to Spanish children at a number of different institutions in Spain; that prior to becoming a material development specialist, Stine had never held any job in graphic design, commerical art or journalism; that Stine attends Portage Project staff meetings; and that the job duties of Stine do not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

13. That the Employer contends, contrary to the Petitioner, that the instructional micro computer specialist, Dayton Johnson, is not a professional employe, and, in addition, that he is a managerial employe and lacks a community of interest with the training specialists; that the instructional micro computer specialist position is responsible for planning, developing and implementing a new program to promote the use of micro computers to teachers and administrators as instructional tools in the K-12 classroom; that the occupant of the position is responsible for the entire program, from bringing schools into the program through invoicing them for services rendered; that one clerical employe assists him in this endeavor; that he keeps track of emerging developments in software, conducts workshops for teachers and administrators, and determines the needs of classroom teachers in the use of micro computers; that he coordinates purchase arrangements for computers and supplies for the school districts; that the occupant works under supervision of data processing director Eid and assistant director Cook, and has an office located in the data processing section of the building; that the position is not that of a computer programmer or data analyst; that the job description requires a bachelor's degree in education, three years of teaching experience and familiarity with the instructional use of micro computers; that a DPI certificate is not required for the job, although Johnson is DPI certified and taught for four years; that Johnson had no experience with micro computers when he was hired, but he has taught himself what he needed to know primarily by reading manufacturer's shop manuals; that Johnson does not participate to a significant degree in the formulation, determination or implementation of management policy; and that Johnson's job responsibilities are predominantly intellectual and varied in nature, involve the consistent exercise of judgment, cannot be placed on a standardized basis, and require knowledge of an advanced type customarily acquired through formal higher education.

14. That the Employer contends, contrary to the Petitioner, that the special education program support teacher, Fred Wollenburg, lacks a community of interest with the training specialists; that the occupant of this position renders state-reimbursed services as part of a state-mandated program to provide educational opportunities for children with statutorily defined exceptional educational needs; that the primary purpose of the program support teachers is to develop individualized instructional programs for individual youngsters with exceptional educational needs; that Wollenburg is state certified to teach K-12 emotionally disturbed children and has an extensive background in classroom teaching; that he works routinely with CESA 12 and school district special education instructors; that the greatest part of his time is spent evaluating children (in their classrooms and at home) thought to be in need of special education; that he reports to special education director Hawkinson; and that Wollenburg shares a community of interst with the other professional employes of CESA 12.

15. That all CESA 12 professionals serve as the consultants for the dissemination of advanced educational information, as presenters or coordinators of inservice programs and workshops, or as assistants in the development of educational programs for their clients (who are educators, parents and students); that said employes employed in the various divisions of CESA 12 possess professional skills necessary to the performance of the above noted functions, and while there may be functional differences in some of said professions, the occupants of said professional positions perform their duties in the furtherance of the Employer's educational program; that the Petitioner's proposed bargaining unit of all professionals consists of employes who share a community of interest sufficient to justify the conclusion that it is an appropriate bargaining unit and is more appropriate than a unit composed exclusively of Portage Project professional employes; and that the establishment of such a bargaining unit will not cause undue fragmentation of bargaining units of employes employed by the Employer in question.

On the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time professional employes of CESA 12, excluding classroom teachers, data processors, accounting personnel, special education aides, technicians, paraprofessionals and supervisory, managerial, and confidential employes, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

2. That the team leader position is neither supervisory nor managerial in nature, and that therefore the occupant of said position who is both a professional employe, and a "municipal employe" within the meaning of Sec. 111.70(2)(b) of the Municipal Employment Relations Act, is appropriately included in the bargaining unit set forth above.

3. That the Chapter I program director and human growth and development coordinator positions are neither supervisory nor managerial in nature, and that therefore, the occupants of said positions who are both professional employes, and "municipal employes" within the meaning of Sec. 111.70(2)(b) of the Municipal Employment Relations Act, are appropriately included in the bargaining unit set forth above.

4. That the SEIMC specialist/coordinator of film library position is not supervisory in nature, and that therefore, the occupant of said position who is both a professional employe, and a "municipal employe" within the meaning of Sec. 111.70(2)(b) of the Municipal Employment Relations Act, is appropriately included in the bargaining unit set forth above.

5. That the materials development specialist is not professional within the meaning of Sec. 111.70(1)(l) of the Municipal Employment Relations Act and is therefore excluded from the bargaining unit set forth above.

6. That the instructional micro computer specialist position is not managerial in nature, and that therefore the occupant of said position who is both a professional employe, and a "municipal employe" within the meaning of Sec. 111.70(2)(b) of the Municipal Employment Relations Act, is appropriately included in the bargaining unit set forth above.

7. That the special education program support teacher is both a professional employe, and a "municipal employe" within the meaning of Sec. 111.70(2)(b) of the Municipal Employment Relations Act, and is appropriately included in the bargaining unit set forth above.

8. That a question of representation within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act has arisen among the municipal employes in the collective bargaining unit set forth in paragraph 1, above.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission before June 15, 1984, in the collective bargaining unit consisting of all regular full-time and regular part-time professional employes of CESA 12, excluding classroom teachers, data processors, accounting personnel, special education aides, technicians, paraprofessionals, and supervisory, managerial and confidential employes, who were employed by CESA 12 on May 25, 1984, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes desire to be represented by CESA 12 Employee Council for the purpose of collective bargaining with CESA 12 on wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Gary L. Covelli, Commissioner

_____
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

The Petitioner seeks an election in a unit consisting of all professional employes, excluding the agency administrator, assistant agency administrator, federal project coordinator, director of special education, classroom teachers and all other data processors, accounting personnel, special education aides, technicians, paraprofessionals, and any supervisory, managerial or confidential employes. The Employer, however, suggests that a unit of all professional Portage Project employes, excluding all non-professional, managerial, supervisory, and confidential employes, would be appropriate. However, because CESA 12 claims that the Portage Project team leaders are managerial/supervisory employes and that the materials development specialist is a non-professional employe, CESA 12's proposed unit would effectively consist of Portage Project training specialists.

The Appropriate Unit

In determining the appropriateness of a collective bargaining unit, the Commission's decision is guided by Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act, which provides:

> The Commission shall determine the appropriate unit for the purposes of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such determination, the Commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

The Commission gives effect to this statutory provision by employing a case by case analysis using the following factors as guides in analyzing the appropriateness of a petitioned for bargaining unit: 1/

1. Whether the employes in the unit sought share a "community of interest" distinct from that of other employes.

2. The duties and skills of employes in the unit sought as compared with the duties and skills of other employes.

3. The similarity of wages, hours and working conditions of employes in the unit sought as compared to wages, hours and working conditions of other employes.

4. Whether the employes in the unit sought have separate or common supervision with all other employes.

5. Whether the employes in the unit sought have a common workplace with the employes in said desired unit or whether they share a workplace with other employes.

6. Whether the unit sought will result in undue fragmentation of bargaining units.

7. Bargaining history.

1/ Milwaukee County, 19753-A (2/83); Wisconsin Heights School District, 17182 (8/79).

The Employer seeks to limit the election to the Portage Project employes, instead of the unit of all professionals proposed by the Petitioner. The Portage Project is an in-house, federally funded division whose employes provide technical assistance and training to teachers of handicapped children outside the CESA 12 service area. The programs and personnel of the Portage Project fluctuate with the availability of federal funds and grants. The remainder of the CESA 12 professionals are state funded and provide services within the CESA 12 service area. All CESA 12 professionals serve as the consultants for the dissemination of advanced educational information, as presenters or coordinators of inservice programs and workshops, or as assistants in the development of educational programs for their clients (who are educators, parents and students). The Employer contends that all of the professional employes who are not training specialists 2/ associated with the Portage Project have a community of interest with the CESA 12 classroom teachers with whom they work in the local school districts.

In CESA 14, 3/ however, the Commission concluded that CESA teachers who are under contract to local school districts are employes of the school districts for which they perform services and thus are not employes of a CESA. Therefore, since the CESA 12 teachers under contract to local school districts are not employed by CESA 12, the non-Portage Project professional employes of CESA 12 could not have a community of interest with outside classroom teachers as argued by the Employer. Considering the fact that all professionals perform duties in support of the Employer's educational program, and work out of the CESA 12 offices, together with the anti-fragmentation principle leads us to conclude that the Employer's proposed unit is too narrow and that a unit of all professional employes is appropriate. 4/

The Challenged Positions

The only position the parties agree to include in either proposed bargaining unit is the training specialist. The remaining seven (7) classifications filled by ten (10) employes in the Association's proposed bargaining unit are challenged by the Employer on the grounds they are supervisory, managerial, non-professional or lack a community of interest with the training specialists. Each will be addressed below.

Team Leaders (Jesien, Wolfe, Schortinghuis and Zeger)

The Employer, contrary to the Petitioner, challenges the four (4) team leaders to the Portage Project training specialists as being supervisory and managerial. It is alleged that the team leaders are supervisory because they possess independent judgment in directing the activity of the training specialist, they have the authority to recommend hiring, promotion to post-probationary status, transfer, discipline and non-renew training specialists. The Employer also challenges the position as being managerial on the grounds the team leaders possess the authority to initiate, develop, fund and implement entire programs of services, and also to create and revise original budgets governing substantial sums of federal grant money.

Section 111.70(1)(o)1 of the Municipal Employment Relations Act defines the term "supervisor" as follows:

2/ The one exception is that the Employer contends that the instructional micro computer specialist has a community of interest with the data processors.

3/ CESA 14, 17235 (8/79).

4/ The Petitioner had proposed to expressly exclude the agency administrator, assistant agency administrator, federal project coordinator, early childhood director, director and assistant directors of special education, and director and assistant director of data processing. The District did not object to those exclusions. For clarity, however, we have revised the petitioned for unit description and the above-noted positions are excluded from the revised unit description as supervisory, managerial and/or confidential.

> As to other than municipal and county firefighters, any 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 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 routine or clerical nature, but requires the use of independent judgement.

The Commission, in determining whether the statutory criteria of Sec. 111.70(1)(o)1 are present in sufficient degree or combination to warrant the conclusion that the position is supervisory, considers the following criteria:

1. The authority to recommend effectively 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 primarily supervising employes;

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes; and

7. The amount of independent judgment and discretion exercised in the supervision of employes. 5/

Not all of the above factors considered by the Commission in determining supervisory status need be present, but if they appear in a sufficent combination the Commission will find an employe to be a supervisor. 6/

We are satisfied that the team leaders do not perform duties and responsibilities in sufficient combination or degree to be deemed supervisory employes. While the team leaders' job description uses the word "supervise" to describe certain aspects of their work with the training specialists, this description is not controlling herein. It merely suggests that the team leader assumes additional or greater responsibility for the successful operation of the educational support program than the other members of the team. While the team leaders are involved in the interviewing process of job applicants, their candidate recommendations are the result of a multi-member committee preference which can be and has been rejected on occasion by the CESA 12 administrators. Even as a committee, team leaders do not have the authority to hire; rather, the ultimate decision making in that respect rests with Gundlach after an independent review of the candidates' qualifications and sometimes an independent interview of the candidate. Likewise, the team leaders may make recommendations as to whether a probationary employe should come off probation, but there is no indication that such recommendations are always followed by administrators or are a standard component of the probationary/promotion process. The team leaders exercise only that authority with respect to the training specialists that is necessary in order to carry out their function of continuing and coordinating their educational support project. They do not assign duties but rather operate as lead persons in

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5/ City of Milwaukee, 6960 (12/64); City of Manitowoc, 18590 (4/81).

6/ Dodge County, 17558-C (2/3/81); City of Lake Geneva, 18507 (3/81).

a team decision making process. Whatever involvement they do have in assigning work is subject to review by Gundlach who has the ultimate authority for assigning and directing the work force of this division. Additionally, the team leaders have not formally evaluated employes, adjusted grievances, or issued written reprimands. Their role appears instead to have been to give collegial communication as to how an employe is expected by management to perform and pointers and reminders to improve in certain areas. Furthermore, these oral admonishments were not written down or placed in the employe's file. Finally, we note that a decision excluding the four (4) team leaders from the bargaining unit would mean five (5) supervisors in the Portage Project would be supervising seven (7) training specialists.

The Employer, contrary to the Petitioner, also contends the team leaders are managerial employes. In determining whether a position is managerial, and thus excluded from the definition of the term "municipal employe" contained in Sec. 111.70(1)(b) of MERA, the Commission has stated:

> Managerial Employes . . . have been excluded from MERA coverage on the basis that their relationship to management imbues them with interest significantly at variance with those of other employes . . . (M)anagerial employes participate in the formulation, determination and implementation of management policy . . . In addition, managerial status may be related to a position's effective authority to commit the Employer's resources. 7/

Specifically regarding the effective authority to commit the Employer's resources, the Commission has stated:

> The power to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 8/

This power must not be "ministerial," such as "the authority to spend money from a certain account for a specific purpose . . ." 9/

The evidence does not support a finding that the team leaders are managerial employes since they do not formulate policy or have the authority to commit the Employer's resources. Although they and the teaching specialists have great latitude in the exercise of independent judgment in developing and implementing their team programs, these programs are within preestablished management policy guidelines. While the team leaders are involved in budgetary processes in terms of drafting federal grants, each grant proposal is submitted to Gundlach who develops the budget for the program.

Chapter I Program Director (Ness) and Human Growth and Development Coordinator (Unke)

The Employer contends the Chapter I program director and human growth and development coordinator are managerial, supervisory, and lack a community of interest with the training specialists. Specifically, the Employer alleges that each possesses sufficient budgetary, policy-making and supervisory authority to align their position with management and disqualify them from inclusion in a bargaining unit. If either is included in a bargaining unit, the Employer contends it should be in a unit with classroom teachers.

We are satisfied that neither Ness nor Unke performs duties and responsibilities sufficient in degree and/or combination to warrant the conclusion that they are supervisors. The record does not support the conclusion that either position

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7/ City of Cudahy (Fire Department), 18502 (3/81) at 8; see Milwaukee v. WERC, 71 Wis. 2d 709, 717 (1976).

8/ Shawano County Sheriff's Department, 15257 (3/77) at 3.

9/ Id.

possesses effective authority to hire, promote, transfer, discipline, discharge or adjust the grievances of CESA 12 employes. Unke has no subordinates or co-workers in her program. While Ness has a secretary working with him, the record does not establish that he has supervisory authority with respect to the secretary as distinct from a more limited work directing relationship. Although Ness evaluates some Chapter I teachers, these teachers are employed by the school districts and not CESA 12.

While the Employer also contends that Ness and Unke are managerial employes, the evidence with respect to their duties and responsibilities does not support such a conclusion since they do not participate to any significant degree in the formulation, determination and implementation of CESA 12 management policy nor do they possess effective authority to commit the Employer's resources. Rather, Ness and Unke serve as consultants to local school districts in meeting explicit state and federal budgetary guidelines, and they monitor the districts' use of funds set aside for specific purposes.

With regard to the community of interest issue, the record reveals that both Ness and Unke are professional employes whose duties, like those of CESA's other professionals, are directly related to CESA's educational mission. We thus conclude that each has a sufficient community of interest with the other professional employes of CESA 12 to warrant inclusion in the Petitioner's proposed bargaining unit.

SEIMC Specialist/Coordinator of Film Library (Shaffer)

The Employer contends that the Special Education Instructional Materials Center (SEIMC) specialist/coordinator of film library is supervisory and lacks a community of interest with the Portage Project training specialists. Specifically, the Employer alleges that the position requires independent judgment in directing the activity of four (4) non-professional employes and possesses effective authority to recommend the hiring, transfer, placement on probation, and termination of these non-professional employes.

We are satisfied that Shaffer does not perform duties and responsibilities in sufficient combination and degree to warrant the conclusion that she is a supervisory employe. In each of the three instances referred to in Finding of Fact No. 11, Shaffer acted at the request or under the direction of administrator Durst or the then director of the film library. While Shaffer does have the ultimate responsibility of directing the work of the four (4) non-professionals in the film library, this constitutes only a small portion of her time as she spends only minutes per day in contact with media center employes. Half of her time is spent on the road performing SEIMC professional responsibilities. It appears that the film library runs independently without the need for day-to-day direction and supervision, as each of the 4 employes is responsible for specific assigned tasks. The testimony of Wilcox, one of the four film library employes, was that she really did not know whether it was Shaffer or Huggett (the administrative assistant) who exercised direct control over the film library employes. This supports the conclusion that while Shaffer is indeed responsible for the oversight of the media center personnel, she is not the only person in the Employer's operation who is in a position to address the concerns and questions of media center employes. Although Shaffer has interviewed employes in past years, she did not interview, recruit or hire any of the current film library/media center employes. Furthermore, she does not authorize or approve leaves, vacations, illness or overtime for the four (4) non-professional employes. Finally, the fact that Shaffer spends only a small portion of her time overseeing the media center employes persuades us that she is not a supervisor within the meaning of MERA.

With regard to the community of interest issue, the record reveals that Shaffer is a professional employe whose duties, like those of other CESA professionals, are directly related to CESA's educational mission. We thus conclude that she has a sufficient community of interest with the other professional employes of CESA 12 to warrant inclusion in the Petitioner's proposed bargaining unit.

Materials Development Specialist (Stine)

The Employer contends that the position of materials development specialist should not be included in a professional bargaining unit because it is not a professional position. Specifically, the Employer alleges that the position consists primarily of implementing, in graphic form, the ideas and decisions of

others by means of routine mental and manual tasks, and does not involve the consistent exercise of discretion and judgment. The Employer also contends that since the position does not require candidates to possess professional training and can be performed without professional training, it is not a professional position.

The Commission is mandated by Section 111.70(1)(l) to employ the following criteria in its determination of professional status:

> (1) 'Professional employe' means:
>
> 1. Any employe 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 employe 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 himself to become a professional employe as defined in subd. 1.

The Commission has held that the above definition does not limit professional employes to only those possessing college degrees 10/ and has not determined professional status solely on the basis of state certification and licensing. 11/

We conclude that the materials development specialist position is not professional. While the job requires creativity and imagination, may well be predominantly intellectual, and involve the exercise of discretion and judgment within the MERA definition, the position does not require the kind and degree of training and experience expressly called for by Sec. 111.70(1)(l)d. While the incumbent clearly possesses sufficient educational background to qualify as a professional employe, neither the job description for the position nor the job itself requires the extended period of study called for in Sec. 111.70(1)(l)d., Stats.

Instructional Micro Computer Specialist (Johnson)

The Employer contends that the position of instructional micro computer specialist is managerial/supervisory, lacks a community of interest with Portage Project training specialists and is not a professional employe. Specifically, the

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10/ Milwaukee County, 8765-E, 14786 (7/76).

11/ Kenosha Vocational, Technical and Adult Education District, 14381 (3/76).

Employer alleges that the occupant of the position is managerial because he possesses the authority to initiate, develop and implement entire programs of services and can affect the employer's resources through entrepreneurial activities. The Employer also asserts that the position can be performed adequately without professional education or training, so that it is not professional in nature. Finally, the Employer contends that since the position differs from Portage Project training specialist positions with regard to program purposes, skills and technical expertise required, extra CESA 12 responsibilities, lines of supervisory authority and expectation of stable employment, it lacks a community of interest with Portage Project training specialists. Instead, the position shares a community of interest with the other employes in the data processing division.

We conclude that the instructional micro computer specialist position is professional. While the technical computer aspects of the job alone would not require the kind and degree of training and experience envisioned by Sec. 111.70(1)(1), the position involves and the Employer requires a professional educator background to compliment the requisite computer knowledge and skills. Thus, the job description requires a bachelor's degree in education, and three years of teaching experience, and familiarity with the instructional use of micro computers. Indeed, familiarity with micro computers is not an absolute precondition of hire since Johnson had no such experience when he was hired. He taught himself what he needed for the job and while some of the instruction he offers can be provided equally well by a computer manufacturer sales representative, Johnson's college degree and experience in teaching are no doubt advantageous to him in the performance of his duties. Furthermore, the Employer has deemed these as essential. We therefore determine that the emphasis on possession of a professional educator's education and experience renders the position professional under MERA.

While the Employer also contends that Johnson is a managerial employe, the evidence with respect to his duties and responsibilities does not support such a conclusion. This is because he does not participate to any significant degree in the formulation, determination and implementation of CESA 12 management policy nor does he possess effective authority to commit the Employer's resources. It is apparent that the policy of promoting the instructional use of micro computers in CESA 12 schools was made prior to Johnson's hiring, and his responsibility to plan and promote that policy is insufficient to warrant managerial status. Neither are we persuaded that the position involves significant enterpreneurial activities or fiscal authority. Instead, the record indicates that Johnson coordinates the computer purchases requested by the local school districts. This ministerial function does not commit CESA 12 resources, nor does it generate income for the Employer.

With regard to the community of interest issue, while the instructional micro computer specialist is the only position in the Employer's data processing division that is proposed for inclusion in the Petitioner's proposed bargaining unit, this is because it is the only position which is alleged to be professional. As Johnson's duties, like those of other CESA professionals, are directly related to CESA's educational mission, we conclude that he has a sufficient community of interest with the other professional employes of CESA 12 to warrant inclusion in the Petitioner's proposed bargaining unit.

Special Education Program Support Teacher (Wollenburg)

The Employer contends that this position lacks a community of interest with

professional unit is more appropriate than a unit limited to Portage Project employes, the special education program support teacher is included in the Petitioner's proposed bargaining unit.

Dated at Madison, Wisconsin this 25th day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Gary L. Covelli, Commissioner

_____
Marshall L. Gratz, Commissioner