

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
Waukegan School District 60,)	
)	
Employer,)	
)	
and)	Case No. 2006-UC-0002-C
)	
Waukegan Office Workers, IFT-AFT,)	
)	
Petitioner.)	

OPINION AND ORDER

On January 19, 2006, the Executive Director issued a Recommended Decision and Order in this matter. The Executive Director granted the unit clarification petition, which sought to include the Alternative Education Facilitator (“AEF”) in the bargaining unit. The Executive Director found that the AEF position was not a managerial position and it was appropriate for inclusion in the unit. Waukegan School District 60 (“District 60”) filed exceptions to the Executive Director’s Recommended Decision and Order on February 8, 2006. The Waukegan Office Workers IFT-AFT (“Union”) did not file a response to District 60’s exceptions.

I.

It should initially be noted that the IELRB will not consider new facts raised for the first time in front of the Board. *Chicago Teachers Union (Day)*, 10 PERI 1008 (IELRB Opinion and Order, 11/10/93). The facts as stated in the Executive Director’s Recommended Decision and Order were not objected to; however, the analysis of the facts was objected to. The facts from the Executive Director’s Recommended Decision and Order will be restated herein.

On August 9, 2005, District 60 posted the position of AEF. The position was filled by Melissa Cross.

According to the AEF’s job description, the AEF reports directly to the Director of Alternative Programs and Services and indirectly to the Associate Superintendent of Specialized Services. The job description lists the following duties:

1. He/she will serve as school liaison between all the alternative programs and the buildings within the district.

2. Maintain all student transcripts and records necessary for all reports and grants related to alternative programs and services.
3. Coordinate and maintain relations and/or data to ombudsmen and other district partnerships for alternative placement.
4. Coordinate and schedule parent meetings for alternative placement or opportunities.
5. Plan, prepare, organize, and invite parents to intake/evaluation meetings throughout the district.
6. Meet with Alternative School Programs (ASP) staff to plan ASP functions.
7. Disseminate monthly/quarterly ASP school information throughout district/community.
8. Plan and prepare all materials for ASP meetings such as refreshments, sign-in sheets, speakers, etc.
9. Attend all District ASP meetings (as needed) and report to the director, parents, or staff as directed.
10. Attend appropriate training, conferences, and staff development sessions as needed.
11. Design and develop annual reports which will be used to determine program and development.
12. Coordinate and organize school events, banquets, and assemblies.
13. Keep the Alternative Program Administrators informed regarding the status on all projects undertaken and of requests of directives received internally or externally.
14. Perform such other duties as may be assigned by the Director of Alternative Programs and Services or the Associate Superintendent of Specialized Services.

The AEF engages in the following activities a majority of the time. She is responsible as a member of the management team for planning the agenda for and content of meetings with staff, parents and/or outside providers of alternative educational programming and develops the content of materials for those meetings. She serves as a District administrative representative at meetings with the Alternative School Programs staff and/or parents, presents administration positions at those meetings, and responds to and/or follows up on staff and/or parent concerns raised at those meetings, within the scope of management's policies and practices. She meets with parents and students eligible for participation in the District's alternative education programs, explains to them the content and expectations of those programs, answers their questions related to the programs, and facilitates their smooth enrollment and participation in the programs. She

investigates and solves problems with third party providers of alternative educational programming around student issues. She plans the content of and implements school events, trainings and assemblies involving alternative educational programming. She participates as part of the management team in identifying and developing alternative educational programming ideas and maintaining an awareness of best practices and innovative programs proven to facilitate effective alternative education programs through attendance at relevant seminars and training sessions throughout the Chicago metropolitan area. She designs and creates the content for annual reports regarding parent and student involvement in alternative education programs and program developments and accomplishments. According to District 60, her liaison duties involve the development of working relationships between District 60 and other alternative education programs, both within and outside of District 60.

The job descriptions for bargaining unit members contain mostly secretarial and clerical duties. However, the Secretary to Early Childhood Programs, among other things, serves as contact person between the Special Education Department and the Lake Forest Hospital Audiological Department; answers questions and provides support to parents; prepares for special education preschool assessment, including contacting parents, scheduling appointments, processing paperwork, preparing conference information, and coordinating all Arena personnel with the Coordinator of Early Childhood Programs; sets up staffings with parents for children who need multidisciplinary conferences; assists with parent linkages in the transitioning of three-year-olds from the PIE program; and processes requests for Voice Clinic. The Parent Information/Support Center Secretary, among other things, provides information to parents on District programs; plans and schedules parent community events; prepares annual reports of events sponsored, attendance per event, and evaluation of event success; and prepares minutes of staff meetings.

The Secretary to the Director of Special Education, among other things, assists in the scheduling of IEP/MDC and/or other relative appointments, maintains summer school program data, establishes and maintains departmental files for all special education students in relative programs, and attends meetings relating to overall secretarial service coordination. The Special

Education/Pupil Services Secretary, among other things, records all referrals for the school social workers. The Special Education Secretary at Waukegan High School, among other things, maintains a student database and prepares the monthly report to the Lincoln Center.

The Psychology Secretary, among other things, prepares and distributes parent/guardian conference notifications. The Secretary to the Director of Alternative/Optional Education Programs and Services, among other things, is responsible for informing the Director of scheduled meetings, correspondence, work to be completed, concerns of administration and staff, and other matters that require attention; assists with end-of-the-year statistics for AOEC Program grants; and maintains the CIMS database of student records, attendance and transcripts.

The Secretary to the K-8 Coordinators for Language Programs, among other things, assists in the preparation and maintenance of federal and state grant applications and reports, and arranges for refreshments at meetings. The Language Programs Assistant, among other things, disseminates information required by District 60 about Bilingual/ESL programs; inputs and maintains the language testing, exit, and refusal data information in the CIMS for all students; and maintains and verifies all student information for the State Annual Student Report submitted to the Illinois State Board of Education.

The AEF, unlike bargaining unit members, plans meetings throughout District 60, rather than merely coordinating meetings; attends meetings as a District 60 administrative representative, rather than attending for note taking purposes; and designs annual reports, rather than merely maintaining or inputting existing information in the annual report. According to District 60, the position regularly requires the exercise of independent and discretionary judgment concerning the implementation of management policies and practices and concerning problem solving issues. According to the Union, organizing and planning is a day-to-day duty of most office staff employees, and office staff employees solve problems and use discretionary judgment to implement management practices and policies. The Union asserts that many bargaining unit employees help management gather data to make decisions or have input in the decision-making

process. According to the Union, office staff employees also design and develop reports for management use in determining practices and policies.

Bargaining unit employees report to a variety of individuals. However, the Secretary to the Director of Alternative/Optional Education Programs and Services reports directly to the Director of Alternative/Optional Education Programs and Services.

Over the last five years or more, District 60 has had at least five other Facilitator positions, including the Community Education Parent Facilitator, the Union-selected WTA Facilitator, the Special Education/Model Parenting Parent Facilitator, the Bilingual Parent Facilitator, and the English Language Learner Programs Facilitator. These positions have not been included in the bargaining unit. The Alternative Education Facilitator position is similar to those positions; items 1, 3, 4, 5, 6, 7, 8, 10, 11, 12 and 14 of the Alternative Education Facilitator job description are the types of job responsibilities required of the other Facilitator positions. According to the Union, over two-thirds of the other Facilitator's job duties deal with working with parents and community agencies that function outside of District 60, whereas the Alternative Education Facilitator's duties are mostly performed within buildings within District 60.

The Community Education Parent Facilitator's job description lists duties including serving as an information source for parents regarding community resources; coordinating, planning and scheduling speakers from community agencies; conducting workshops regarding personal and family health; working in conjunction with other agencies to develop linkages; joining and participating in community partnerships/affiliations; providing information on resources to Parent Information and Support Center staff; designing and conducting an annual needs assessment and parent survey; attending appropriate trainings, conferences and staff development sessions that may be available; establishing a Community/Business Advisory Committee; assisting in planning Parent Information and Support Center fundraisers and special events. The Community Education Parent Facilitator reports directly to the Parent Information and Support Center Coordinator.

The Union-selected WTA Facilitator's job description lists duties including serving as a non-voting member of the Waukegan Teaching Academy Board, managing the mentoring

program, representing the Waukegan Teaching Academy Board at appropriate meetings, planning the inservice/meetings for probationary teachers and keeping attendance at the meetings, helping plan the new teacher inservice, being responsible for the implementation of the Waukegan Teaching Academy Board's plans and decisions, and promoting National Board Certification. The Union-selected WTA Facilitator reports directly to the Waukegan Teaching Academy Board.

The Special Education/Model Parenting Parent Facilitator's job description lists duties including contacting parents; assisting parents in understanding the special education system and process; transitioning parents to appropriate personnel; coordinating Special Education Parent/Teacher Advisory Council ("SEPTAC") meetings, including planning programs, securing speakers, arranging for facility usage/refreshments/supplies, developing and disseminating publicity, and attending meetings; disseminating information about SEPTAC; establishing recruiting procedures for SEPTAC; establishing and serving as a member of a SEPTAC Executive Board; working in conjunction with other agencies and parent organizations to develop linkages with SEPTAC; planning, scheduling and conducting Model Parenting group sessions; creating and implementing curriculum for Model Parenting Secretary; coordinating with the Model Parenting Secretary in completing required state documents; providing additional workshops targeting parents; and assigning in planning and implementing Parent Information and Support Center fundraisers and special events. The Special Education/Model Parenting Parent Facilitator reports directly to the Parent Information and Support Center Coordinator and indirectly to the Executive Director of Specialized Instruction and Services.

The Bilingual Parent Facilitator's job description lists duties including scheduling, planning and arranging all bilingual parent workshops; consulting with the Language Programs Coordinator and/or the Language Programs Director about suggestions and recommendations for the quarterly bilingual parent programs; coordinating and scheduling parent meetings with campus principals; planning, preparing and inviting parents to quarterly parent meetings; meeting with the PAC executive board to plan all PAC functions; disseminating parent information at parent sessions; creating and disseminating PAC flyers; planning and preparing all materials for

PAC meetings such as refreshments, sign-in sheets, speakers, and babysitters; attending all District 60 PAC meetings and reporting to the parents about activities; attending training, conferences, and staff development sessions; recruiting for, training for, organizing, and supervising school volunteer programs; maintaining and submitting a weekly log; designing and conducting annual parent surveys; planning, organizing, and scheduling speakers and sessions for the annual parent surveys; planning, organizing, and scheduling speakers and sessions for the annual parent spring seminar; and keeping the Bilingual Coordinator and the Director of Language Programs informed concerning the status of projects and requests of directives. The Bilingual Parent Facilitator reports directly to the Language Programs Coordinator and indirectly to the Language Programs Director.

The English Language Learner Programs Facilitator's job description lists duties including supervising the maintenance of records; scheduling, administering and scoring tests, and preparing them for shipping; attending monthly meetings with the English Language Learner Programs Director; monitoring the placement of English Language Learner Programs students; Coordinating and scheduling exiting conferences; referring refusals, re-enrollments, and incorrect placements to Coordinators or the Manager of Bilingual Student Data and Assessment; reviewing quarterly reports; and following the procedures outlined in the Office of Civil Rights Voluntary Action Plan by monitoring students who are not in the program. The English Language Learner Programs Facilitator reports directly to the English Language Learner Programs Director.

II.

One of District 60's exceptions is that the Board investigator acted improperly by requesting information from the Union *sua sponte*. District 60 states "such action places the Board in a position of serving as investigator rather than an adjudicator of the issues as presented by the parties, a position that is outside of the scope of its authority and which creates an inherent conflict of interest." District 60's Exceptions p. 1.

Section 1110.160 of the Board's Rules, 80 Ill. Adm. Code 1110.160, governs the procedures of petitions for clarification of the bargaining unit. Section 1110.160(c) of the Board's

Rules and Regulations states that “[t]he Executive Director or his agent shall *investigate* the petition[.]” 80 Ill. Adm. Code 1110.160(c) (emphasis added).

The Board Agent has the authority to conduct an investigation and did not act improperly by requesting that the Union supplement its petition. The Board Agent has the authority to request supplemental evidence *sua sponte*.

District 60 also took exception to the Executive Director’s community of interest analysis. District 60 also contends that it is more appropriate to keep the AEF situated with other like titled facilitator positions instead of placing the AEF position in the bargaining unit.

The Executive Director performed a thorough community of interest analysis taking into consideration all the evidence that was presented at the time of the investigation. As the Executive Director noted, some similarities in duties are present and one bargaining unit employee reports to the same person as the AEF. Further, the petitioned for unit was one that included the AEF position in the already existing bargaining unit of secretarial and clerical employees. It is not necessary to determine whether it is more appropriate to place the AEF position in the bargaining unit or exclude the position like the other facilitator positions. It is not required that the position be placed in the most appropriate unit, but rather that it be placed in an appropriate unit. *Black Hawk College Professional Technical Unit v. IELRB*, 275 Ill. App. 3d 189, 655 N.E.2d 1054 (1st Dist. 1995) (emphasis added). A unit including the AEF and the positions in the existing bargaining unit is an appropriate unit.

District 60 argues that the appropriate standard to include a position in an existing bargaining unit is one that requires a showing of “intense community of interest.” District 60’s Exceptions p. 4, *citing SEDOL Teachers Union v. IELRB*, 276 Ill. App. 3d 872, 884, 658 N.E.2d 1364, 1372 (1st Dist. 1995). However, *SEDOL* is distinguishable from the present case. In *SEDOL*, the Appellate Court determined that the community of interest between the petitioned-for employees and certain other employees was not so intense that the petitioned-for separate bargaining unit would be arbitrary and inappropriate. The court did not rule that an intense community of interest is required to approve a petitioned-for unit placing the employees who are the subject of the petition in an existing unit.

Nor has the Board held in any other case that an “intense community of interest” is necessary for inclusion in a bargaining unit.

District 60 also contends that the historical pattern of recognition should be given “weight equivalent to the community of interest analysis as a whole.” District 60’s Exceptions p. 3. Assuming, *arguendo*, that the historical pattern of recognition should be equally weighted, the AEF position was a newly created position and has no history of either inclusion or exclusion. District 60’s attempt to include the AEF position with the other facilitator positions has no more support from the historical pattern of recognition than the petitioned-for unit placement of the AEF.

Lastly, District 60 argues that the AEF position is a managerial position and therefore should be excluded from the bargaining unit. There is a two-part test to determine managerial status: (1) the employee must be predominantly engaged in executive and management functions; and (2) the employee must exercise responsibility for directing the effectuation of management policies and procedures. 115 ILCS 5/2(o), *County of Cook v. ILRB*, 351 Ill. App. 3d 379, 386, 8152 N.E.2d 1107, 1114 (1st Dist. 2004). *County of Cook* goes on to state that “[e]xecutive and management functions specifically relate to the running of the agency or department, including the establishment of policies and procedures, preparation of the budget, and responsibility that the agency or department operates effectively and efficiently.” *County of Cook*, 351 Ill. App. 3d at 386.

Viewing the evidence of the AEF position’s job descriptions and job duties together, there is no evidence that the AEF position is predominantly engaged in executive and management functions. The AEF primarily engages in coordinating and facilitating alternative education programs. Thus, the AEF position fails to meet the first prong of the managerial employee test. Therefore, the AEF position is not a managerial employee.

III.

For the above reasons, **IT IS HEREBY ORDERED** that the Executive Director's Recommended Decision and Order is affirmed. The unit clarification petition is granted.

IV. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the appellate court of the judicial district in which the Board maintains an office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision," 115 ILCS 5/16(a).

Decided: May 8, 2007
Issued: Chicago, Illinois

Lynne O. Sered, Chairman

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