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In the Matter of the Petition of :
 :
MILWAUKEE VOCATIONAL TEACHERS UNION :
LOCAL 212, AMERICAN FEDERATION OF :
TEACHERS, AFL-CIO :
 :
Involving Employes of :
 :
MILWAUKEE BOARD OF VOCATIONAL :
AND ADULT EDUCATION :
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Case I
No. 8584 ME-58
Decision No. 6343

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. David L. Uelmen; and Mr. John Ligtenberg, for the Union.
Mr. Carl F. Kinnel, Milwaukee Assistant City Attorney; Dr. George A. Parkinson, Director of Milwaukee Vocational and Adult School; Mr. Ralph E. Bowes, Vice President of Milwaukee Board of Vocational and Adult Education; Mr. Harold S. Vincent, Superintendent of Public Schools, for the Employer.
Quarles, Herriott & Clemons, Attorneys at Law, by Mr. John G. Kamps, for the Association.

No. 6343

Schools Education Association to intervene in the instant proceeding, after said Association so moved and satisfied the Board that it was a labor organization representing certain employees of the above named Municipal Employer; and the Board having considered the evidence, arguments and briefs of Counsel, and being satisfied that questions have arisen concerning the appropriate collective bargaining unit and representation of certain employees of the Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

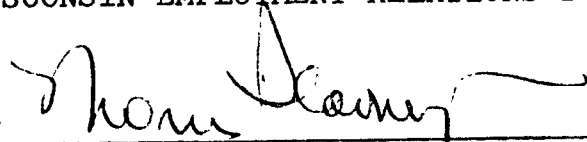
That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Board within thirty (30) days from the date of this Directive among all regular teaching personnel of the Milwaukee Board of Vocational and Adult Education, teaching at least fifty per cent of a full teaching schedule excluding teaching personnel teaching less than fifty per cent of a full teaching schedule, special service counselors, associate faculty counselors, faculty counselors, administrative counselors, office and clerical employees, and all other employees, supervisors and executives who were employed by said Municipal Employer on May 14, 1963, except such employees as may prior to the elections quit their employment or be discharged for cause for the purposes of determining (1) whether or not a majority of such employees desire to constitute themselves a separate collective bargaining unit and (2) whether or not a majority of such employees desire to be represented for the purposes of conferences and negotiations with the Municipal Employer on questions of wages, hours and conditions of employment by Milwaukee Vocational Teachers Union Local 212, American Federation of Teachers, AFL-CIO, or by Milwaukee Vocational and Adult Schools Education

Association, affiliated with the Wisconsin Education Association,
or by neither of said organizations.

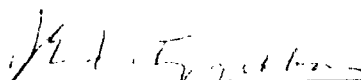
Given under our hands and seal at
the City of Madison, Wisconsin, this
14th day of May, 1963.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By



Morris Slavney, Chairman



J. E. Fitzgibbon, Commissioner



Arvid Anderson, Commissioner

In the Matter of the Petition of
MILWAUKEE VOCATIONAL TEACHERS UNION
LOCAL 212, AMERICAN FEDERATION OF
TEACHERS, AFL-CIO
Involving Employees of
MILWAUKEE BOARD OF VOCATIONAL
AND ADULT EDUCATION

Case I
No. 8584 ME-58
Decision No. 6343

Milwaukee Vocational Teachers Union, Local 212, American Federation of Teachers, AFL-CIO, hereinafter referred to as the Union, filed a petition with the Board requesting that an election be conducted, pursuant to Section 111.70 of the Wisconsin Statutes, to determine the collective bargaining representative for "all regular full time day school faculty personnel carried on the faculty salary schedule in Classes I, II, III, IV and V" in the employ of the Milwaukee Board of Vocational and Adult Education, hereinafter referred to as the Municipal Employer, "excluding all special service counselors, associate faculty counselors, faculty counselors, administrative counselors, and all part time day school and all night school employees and all other employees and supervisors as defined in the Act".

At the outset of the hearing the Milwaukee Vocational and Adult Schools Education Association, affiliated with the Wisconsin Education Association, hereinafter referred to as the Association, moved to intervene in the proceedings, contending that it was a labor organization within the meaning of Section 111.70 of the

Wisconsin Statutes and therefore entitled to represent, and claimed in fact, to represent many of the employees in the unit claimed to be appropriate by the Union. The Association indicated a desire to be placed on the ballot in any election conducted by the Board among employees of the Municipal Employer. The Union objected to the intervention of the Association, claiming that the latter was not a labor organization within the meaning of the statute. The Board, during the course of the hearing, permitted the Association to present evidence with respect to its functions as to the representation of its members in conferences and negotiations with the Municipal Employer on questions of wages, hours and conditions of employment.^{1/} The term labor organization is not defined in Section 111.70.

At least since 1948 to date the Association, which presently claims 205 members among the employees of the Municipal Employer, has appeared for its membership in meetings with representatives of the Municipal Employer and at such meetings it presented various recommendations with respect to proposed changes in wages, hours and working conditions for the consideration of the Municipal Employer. As an example of such activity on May 31, 1961, in a letter from its president to the chairman of the Municipal Employer's Personnel Committee, the Association wrote in part:

"We would like to call attention again to the fact that our present salary schedule makes it difficult for the administration to attract and hold the type of profes-

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Section 111.70 (2) of the Wisconsin Statutes provides as follows:

"Municipal employees shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment, and such employees shall have the right to refrain from any and all such activities."

sional personnel which our school must have to fulfill the training needs of the community. Therefore, we are suggesting that a 'long-term' salary schedule with a range from \$5,000 to \$13,000 be considered. We recommend the annual increment to be at least \$500. Our teachers' professional salary schedule would then be:

Class I	\$5,000 beginning salary	\$ 9,500 maximum salary	10 steps
Class II	\$5,000 beginning salary	\$10,500 maximum salary	12 steps
Class III	\$5,500 beginning salary	\$11,500 maximum salary	13 steps
Class IV	\$6,000 beginning salary	\$12,000 maximum salary	13 steps
Class V	\$6,500 beginning salary	\$13,000 maximum salary	14 steps

* * *

- 1) That all personnel on the professional salary schedule be given a \$500 raise, effective January 1, 1962.
- 2) That the sick-leave policy be changed so that our employees can accumulate 120 days of sick leave.
- 3) That the present major-medical insurance plan be improved. Our Association representative on the all-school insurance committee will present our suggestions on this matter.
- 4) That instructors from our day school faculty who are given evening school teaching assignments be paid at the rate of \$20 for a two-hour session and \$25 for a two and one-half hour session. We further recommend that evening school instructors not on our day school faculty be paid at the rate of \$13.50 for a two-hour session and \$18.50 for a two and one-half hour session. Also, all administrative and clerical staff assigned to evening school shall be given an increase in proportion to their present rate.

Our purpose in asking for a division of salary in evening school teaching assignments is two-fold. First, the teacher from the day school faculty who has an evening school teaching assignment is responsible for the development of curriculum, course outlines, etc., and for the maintenance of supplies, tools and equipment for the classroom, shop or laboratory. Second, we feel that a substantial increase in evening school salary will attract more of our day school faculty to these assignments, thereby continuing to upgrade the quality of our evening school program.

- 5) That credit be given toward higher salary classification for educational travel.
- 6) That a policy be established with regard to instructors accepting positions with the International Cooperation Administration, Peace Corps assignments, or similar governmental teaching arrangements, so that such teachers will be granted full leave of absence without pay, but also will gain any earned increments while on such leave.

- 7) That a study be made of all staff positions with a view toward keeping their salary schedules in line with those of like work in the area."

The activities of the Association in such matters were similar to the activities of the Union during the same period, and representatives of the Municipal Employer dealt in like and similar fashion with representatives of both the Association and the Union on their recommendations and proposals.

Following the taking of evidence with regard to the status of the Association, the hearing was recessed and during the recess Chairman Slavney and Commissioner Fitzgibbon, who were present at the hearing, considered the Association's motion to intervene and the objections raised thereto by the Union. Following the recess the Board orally announced its ruling on the record, finding the Association to be an organization composed of employees of the Municipal Employer and that among its purposes was the representation of its members for the purposes of collective bargaining within the meaning of Section 111.70 Wisconsin Statutes and that it did have an interest in the instant proceeding, since it claims to represent employees in the proposed collective bargaining unit and that it was a labor organization representing municipal employees of the Municipal Employer within the meaning of said statute, and therefore the motion to intervene in this proceeding was orally granted by the Board.

NATURE OF ORGANIZATIONS HAVING REPRESENTATIVE STATUS

We deem it appropriate here to administratively establish criteria for future determination as to what type of organizations the Board will consider proper to represent municipal employees in conferences and negotiations with their municipal employers, or representatives thereof, on questions of wages, hours and conditions of employment. Section 111.70 (2) setting forth the RIGHTS OF MUNICIPAL EMPLOYEES refers to affiliations with "labor

organizations" and the right to be represented by "labor organizations". Section 111.70 (3) setting forth PROHIBITED PRACTICES prevents municipal employers, their officers and agents from encouraging or discouraging membership in any "labor organization, employe agency, committee, association or representation plan" by discrimination in regard to hiring, tenure or other terms or conditions of employment.

Section 111.70 (4) (d) dealing with "collective bargaining units" contains the following language:

"Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employes of the employer, either the union or the municipality may petition the board to conduct an election among said employes to determine whether they desire to be represented by a labor organization. Proceedings in representation cases shall be in accordance with ss. 111.02 (6) and 111.05 insofar as applicable, except that where the board finds that a proposed unit includes a craft the board shall exclude such craft from the unit. The board shall not order an election among employes in a craft unit except on separate petition initiating representation proceedings in such craft unit."

Section 111.70 (4) (e) dealing with "fact finding" refers to an employer or "union" failing or refusing to meet or negotiate in good faith. Subsection (g) of 111.70 (4), also dealing with fact finding, indicates that the fact finder shall serve his findings of fact and recommendations upon the "union".

Section 111.70 (4) (h) 1 dealing with parties in prohibited practices states that any "labor organization" may be a party to a prohibited practice proceeding.

Section 111.70 (4) (h) 2 dealing with parties in fact finding cases provides that only "labor unions" which have been certified as the representative of the employes in a collective bargaining unit or which the employer has recognized as the representative of said employes shall be a proper party in initiating fact finding proceedings and the same subsection provides that the cost of fact finding proceedings shall be divided equally between said "labor organization" and the employer.

Subsection (1) of Section 111.70 (4) dealing with agreements resulting from negotiations permits the employer to execute an agreement with a "labor organization".

Section 111.70 (4) (j) dealing with personnel relations in law enforcement permits a majority of police, sheriff or county traffic officers to designate a "representative" to represent them in fact finding procedures and provides that such "representative" may be required by the Board to post a bond.

As can be seen there is no consistency in the use of any of the terms "labor organization", "employee agency", "committee", "association", "representation plan", "labor union", "union", or "representative". If the employee organization, regardless of its name, satisfies the Board that its purpose is to represent municipal employees in conferences and negotiations with municipal employers on questions of wages, hours and conditions of employment, such organization or its representative shall be considered by the Board to have the right, under appropriate circumstances, to become a party in any proceeding conducted by the Board pursuant to Section 111.70 of the Wisconsin Statutes.

ISSUES WITH RESPECT TO APPROPRIATE UNIT

During the course of the hearing an issue arose with respect to the unit appropriate for collective bargaining. As was noted earlier herein the Union requested that the election be conducted in a collective bargaining unit consisting of only full time teaching personnel and would exclude not only employees of the municipal employer engaged in tasks other than teaching but also would exclude part time teaching personnel. During the course of the hearing the Union changed its petition and would include teaching personnel who teach 50% of a full teaching schedule.

After intervention, the Association expressed its position with respect to the unit issue and contended that the unit appropriate

for the election should include not only those personnel desired by the Union but also should include special service counselors, associate faculty and faculty counselors, administrative counselors, office and clerical employees as well as the remaining teaching personnel which consisted of part time day school teachers and all night school teachers. During the course of the hearing the Association agreed to exclude associate faculty and faculty counselors as well as administrative counselors. The Municipal Employer took no position with regard to the unit appropriate for the election.

The parties are in agreement as to the exclusion of supervisory personnel, which would include apparently the associate faculty and faculty counselors as well as the administrative counselors, and also agreed to exclude certain technical employees, as well as managerial and custodial employees.

THE MUNICIPAL EMPLOYER AND ITS EMPLOYEES

The Municipal Employer is managed by a Board of Vocational and Adult Education. However the primary responsibility for the day to day operation of the Municipal Employer rests with a Director who in turn has two Assistant Directors aiding in the administration of the functions of the Municipal Employer. The Municipal Employer operates five schools. They are as follows:

(1) The Continuation School - Compulsory age students from 16 to 18 years of age if not attending high school are required to attend the continuation school. Classes are conducted during the daytime hours only.

(2) Apprentice School - This school provides instructions for individuals engaged in apprenticeship training in conjunction with employment by private employers for the purpose of obtaining skilled journeyman status. Classes are primarily taught in the daytime, however there may be two or three nighttime classes.

(3) Adult High School - This school operates both daytime and nighttime classes and it is a regular accredited high school for students who desire to earn a high school diploma.

(4) Adult School - The purpose of the adult school is to educate those in attendance for employability or for the purpose of personal self-fulfillment but primarily the school is for the training of people who desire to better their employment status. Classes are held both day and night.

(5) Institute of Technology - This branch of the Municipal Employer conducts classes on a two year junior college level and its primary function is a two year terminal program leading to employment in two years. It also provides a two year transfer program which would provide transfer to another four year college or university.

In operating its five schools the Municipal Employer has created and operates under five Services, namely General Administrative Services, Academic Services, Student Services, TV Operation, and Financial and Operation Services. All the employees of the Municipal Employer are employed in one or the other of said Services. The following tabulation reflects the breakdown of the classification of employees employed in the various Services. The number appearing in parentheses following the classification indicates the number of employees employed in that classification.

GENERAL ADMINISTRATIVE SERVICES

Assistant Director and Business Manager
Special Services Counselor
Administrative Assistant and Secretary (4)
Clerk IV
Clerk Typist II

ACADEMIC SERVICES

Administrative Counselor
Faculty Counselor (10)
Training Specialist
Special Services Counselor (6)
Teacher V (library)

Teacher, Special Assignment IV {Family Life}
Teacher, Special Assignment II {Family Life}
Classroom Teacher V (89)
Classroom Teacher IV (42)
Classroom Teacher III (38)
Classroom Teacher II (61)
Classroom Teacher I (2)
Part time Teacher V (3)
Part time Teacher III (8)
Part time Teacher II (15)
Part time Teacher I (9)
Family Life Discussion Leader (7)
Audio-visual Aids Technician
Clerk IV
Instructional Services Coordinator
Librarian I
Clerk Typist II (3)
Clerk Typist I
Food Service Supervisor
Accompanist (2)

STUDENT SERVICES

Administrative Counselor
Associate Faculty Counselor (2)
Special Service Counselor (15)
Teacher - Special Assignment IV {Welfare}
Teacher - Special Assignment II {Welfare}
Teacher - Special Assignment IV {Induction}
School Physician
School Nurse
Attendance Officer
Administrative Assistant
Psychometric Technician
IBM Supervisor
IBM Assistant Supervisor
Student Service Coordinator I (7)
Clerk III
Clerk Typist III (7)
Clerk Typist II (9)
Clerk Typist I (7)
Telephone Operator (2)

Temporary Help at Beginning of Semesters

Clerk Typist III (3)
Clerk Typist I (2)

TELEVISION OPERATION

Faculty Counselor
Associate Faculty Counselor (2)
Production Manager
Assistant Chief Engineer
Film Supervisor and Projectionist
Producer Director II (2)
Producer Director I
Television Engineer (6)
TV Artist
Film and Projection Technician
Studio Manager
Continuity Traffic Supervisor (2)
Clerk Typist II (2)

FINANCE AND OPERATION SERVICES

Finance, Equipment and Supplies

Senior Accountant
Bursar
Accountant I (2)
Clerk Typist III (4)
Clerk Typist II (5)
Clerk Stenographer II
Purchasing Agent
Buyer
Assistant Buyer
Maintenance Worker I
Cafeteria Manager
Cafeteria Worker II (5)
Cafeteria Worker I (5)

General Services

Teacher, Special Assignment V (Bindery)
Teacher, Special Assignment V (Printing)
Lithographic Proofer and Compositor
Printer Assistant (2)
Photographer
Bindery Assistant II (4)
Bindery Assistant I (4)
Clerk Stenographer IV
Clerk Stenographer III
Clerk Stenographer II (5)
Clerk Stenographer I (6)

Buildings and Grounds

Building Engineer
Assistant Building Engineer
Operating Engineer I
Maintenance Worker III (9)
Maintenance Worker II (4)
Maintenance Worker I (5)
Security Officer (7)
Custodian and Building Supervisor (Evening)
Custodial Supervisor
Custodial Worker III
Custodial Worker I (26)
Public Service Attendant (2)

In addition to the employees employed in the above noted classifications the Municipal Employer also employs from 500 to 550 individuals teaching night classes, 80 to 100 of whom are employed by the Municipal Employer teaching daytime classes. The Municipal Employer generally, by administrative action, will not employ anyone to teach more than two nights per week except on rare occasions and that if an employee teaches more than two nights a week during the evening he is normally employed as a teacher on

the regular teaching staff. Employees employed on the regular teaching staff of the Municipal Employer, including part time teachers who teach at least 50% of the regular teaching schedule are paid on the basis of the school year and receive sick leave benefits. They also participate in and are eligible to receive teachers' retirement benefits and they also receive tenure. Tenure is defined as security rights for job purposes. Employees who are engaged in teaching as a principal occupation earn tenure after three years of teaching and after receiving tenure are no longer on probation and have certain rights with respect to their positions. Part time teachers who teach less than 50% of the normal teaching schedule and who predominantly teach at night are treated separately by the Municipal Employer in that they are paid by the semester for each class period taught. Such payment is proportionately less than is received by regular teachers for the same hours of teaching. Said part time teachers do not receive sick leave, do not participate in teachers' retirement benefits, nor are they entitled to tenure, nor do they earn any credits toward tenure, while teaching less than 50% of the normal teaching schedule.

POSITIONS OF THE PARTIES

The Union would limit the bargaining unit to all regular teaching personnel and would exclude all part time teachers teaching less than 50% of a regular teaching schedule, all special service counselors, all clerical personnel and all other employees of the Municipal Employer. The Association would include all regular teaching personnel, all night school teachers, all special service counselors, all part time day school teachers and all clerical personnel.

The Union supports its position by the claim that the regular teaching personnel constitute an appropriate professional or craft

group of employes as that term is used in Section 111.70 of the Wisconsin Statutes, that the Municipal Employer has treated part time teachers teaching less than 50% of the teaching schedule differently than the regular teaching personnel and that the so-called part time teachers are actually temporary and therefore should be excluded. With respect to the night school teachers the Union argues they too are only temporary personnel since the rules of the Municipal Employer prohibit them from teaching sufficient hours to be treated as regular staff employes, and further, the fact that the night school teachers are compensated differently from regular personnel and since they are not certified teachers, they do not have a community of interest with the regular faculty personnel. Therefore, the Union contends that to include such a group with the regular faculty would do violence to the concept of separate representation for professional employes. The Union further would exclude the special service counselors and clerical employes because they do not teach and therefore are not part of the professional or craft group as are also the remaining employes of the Municipal Employer.

The Association would include any of the employes engaged in teaching regardless of whether said employe is employed as a regular daytime teacher, part time day teacher or night teacher as well as the special service counselors and the office and clerical employes. In support of its position the Association argues that historically the Municipal Employer has included all of said employes as one group or division for the purposes of collective bargaining since all employes either directly serve the students, such as the teachers and special service counselors, or perform functions directly aimed at helping the teachers and special service counselors to serve the students. Counsel for the Association submitted a detailed and well-prepared brief in reviewing

various Board cases with respect to the establishment of collective bargaining units in representation elections conducted by the Wisconsin Employment Relations Board in the administration of the Wisconsin Employment Peace Act. Counsel cites various cases in support of his argument that the Board has considered the bargaining history as clearly the most important single test to be applied by the Board in determining whether a group of employees constitutes a single division, department or plant. We do not agree with such a conclusion. We acknowledge, however, that the bargaining history is a factor in determining whether or not the unit sought has been considered a separate division or plant. As Association's Counsel relates, other factors have been considered in such a determination, such as physical separation, differences in wages, hours and working conditions, separate supervision and the like.

Furthermore, the Association argues that the group described in the petition of the Union does not constitute a separate craft within the meaning of Section 111.70 of the Wisconsin Statutes, claiming that employees are not equally qualified or do not perform exactly the same duties. The Association argues that if all the teachers are engaged in a single craft that the Board should not exclude craft employees from the eligibles merely because their pay is less or they are part time.

DISCUSSION

Section 111.70 (4) (d) provides that proceedings in representation cases shall be in accordance with 111.02 (6) and 111.05 of the Wisconsin Employment Peace Act insofar as applicable, except where the Board finds that a proposed unit includes a craft the

a single craft, division, department or plant shall have voted by secret ballots as provided in section 111.05 (2) to constitute such group a separate bargaining unit they shall be so considered . . ."

Section 111.05 (2) provides as follows:

"Whenever a question arises concerning the determination of a collective bargaining unit as defined in section 111.02 (6), it shall be determined by secret ballot, and the board, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department or plant as to the determination of the collective bargaining unit."

The unit which the Union proposes for the purposes of the election is less than all employees of the Municipal Employer, therefore the Board must determine whether or not the employees in the proposed unit do in fact constitute either a separate craft, division, department or plant. As we stated in Appleton Water Commission^{2/}:

"Section 111.70 (4) (d) of the Wisconsin Statutes provides that proceedings in representation cases involving employees shall be conducted and determined in accordance with Sections 111.02 (6) and 111.05 of the Wisconsin Employment Peace Act insofar as applicable, with the exception concerning craft employees.

Section 111.02 (6) of the Wisconsin Employment Peace Act defines the term 'collective bargaining unit' as 'all of the employees of one employer, except that where a majority of such employees in a single craft, division, department or plant shall have voted by secret ballot . . . to constitute such group a separate bargaining unit, they shall be so considered . . .'

Section 111.05 establishes the procedure for, and the effect of, elections to determine the exclusive bargaining representatives and the bargaining unit.

In non-municipal employment whenever a petition for an election is filed with the Board and where, in that petition, the petitioner requests an election among certain employees not constituting all of the employees of the employer the Board has no power to determine what constitutes an appropriate collective bargaining unit. The Board determines whether the group of employees set out as being an appropriate unit, does in fact constitute a separate craft, division, department, or plant of the employer. Employees involved, if they do constitute a separate craft, division, department, or plant of the employer, are then given the opportunity to decide for themselves whether they desire to constitute a separate bargaining unit.

^{2/}
Decision No. 6075, 8/62

Whenever a petition for an election is filed with the Board, and in that petition the petitioner requests an election to be conducted among certain employees, and where those employees do not constitute all of the employees of the employer, the Board must, if an issue is raised during the proceeding, determine whether or not such group of employees constitute a separate craft, division, department, or plant. The Board's action with regard to the establishment of the bargaining unit is limited to determining whether or not a separate craft, department, division, or plant exists and, if so, the employees, by their vote, determine the bargaining unit."

In Winnebago County Hospital and Pleasant Acres Home,^{3/} we stated the following with regard to the determination of a "craft" under Section 111.02 (6) of the Wisconsin Employment Peace Act and under Section 111.70 (4) of the Wisconsin Statutes dealing with municipal labor relations:

"We shall consider employees to be engaged in a single craft when they are a distinct and homogeneous group of skilled journeymen, craftsmen, working as such together with their apprentices and/or helpers. To be a journeyman craftsman, an individual must have a substantial period of apprenticeship or comparable training. An excellent rule of thumb test of a worker's journeyman standing is the number of years apprenticeship he has served---the generally accepted standard of which varies from craft to craft. We will, however, recognize an experience equivalent where it is clearly demonstrated to exist. All employees included in the unit must be practitioners of the same allied craft and must be primarily engaged in the performance of tasks requiring the exercise of their craft skills. Helpers, who are in line of progression in the craft will be included as part of the craft.

... We shall consider professional employees falling within the definition of "craft", if such employees have a substantial period of study and training to qualify for their professional status. Matters to be taken into consideration in determining whether or not an employee is a professional employee will be determined on a case to case basis. The nature of the profession, training, and duties performed by the individual employees will be considered, as well as the extent to which the skills performed by them differ from the duties performed by other employees of the employer."

Chapter 42 of the Wisconsin Statutes deals with teachers and the state employees retirement Act and Section 42.20 (13) defines "teacher" as any person legally or officially employed or engaged

^{3/} Decision No. 6043, 7/62

in teaching as a principal occupation. Generally individuals who engage in teaching as a principal occupation have had a substantial period of education and training to qualify for their status as teacher. We conclude that employees who make teaching their principal occupation are professional employees and since we have previously determined that professional employees fall within the definition of "craft" within the meaning of Section 111.70 (4) (d) of the Wisconsin Statutes teachers cannot be included in a collective bargaining unit with non-teaching employees.

We are confronted with the problem as to whether or not all employees of the Municipal Employer who are engaged in teaching should be included in a single separate collective bargaining unit. There is no doubt that all of the regular classroom teachers from Classes V through I, who teach classes in the daytime, are engaged in teaching as a principal occupation. Part time teachers who teach at least 50% of the regular teaching schedule, regardless of whether they teach day or night are considered for the purpose of this proceeding as being engaged in teaching as a full time profession. Those employees who teach less than 50% of a full teaching schedule for the Municipal Employer are not so considered. There may be a few employees who teach for another educational facility on a full schedule basis, however, if these employees are teaching less than 50% of the regular teaching schedule for the Municipal Employer they are treated by the Municipal Employer as ^{fully} employees not/engaged in the profession. The Municipal Employer has recognized that there exists a division between the teachers we have identified as those engaged in the full time profession of teaching and those not so engaged, since teachers who teach less than 50% of a full teaching schedule do not participate in sick leave, teacher retirement benefits, nor tenure, while those who teach 50% or more of the teaching schedule do participate in said

benefits. Furthermore, evidence of the division which the Municipal Employer has created between the two groups is the fact that the great majority of the teachers who teach more than 50% of a regular teaching schedule are paid on a yearly basis, every two weeks, while those who teach less are paid on a per diem basis and hired for a single semester.

In response to the Association's contention that the Municipal Employer has historically bargained for all the teachers and certain other classifications in one group, we conclude that, while the Association and the Union in the past prior to the enactment of Section 111.70 of the Wisconsin Statutes may have submitted proposals with respect to wages, hours and working conditions for the employees of the Municipal Employer covering employees in addition to teachers, it cannot be said that the history of "collective bargaining" was so permanent that it established a division or department which remains forever inviolate. It appears to the Board that the proposals were submitted in such a manner as to cover the requests of the members of both the Association and the Union regardless of the type of work they performed. The Association made demands for its members, the Union made demands for its members and the Municipal Employer considered, no doubt, the demands of both organizations covering Union members and Association members engaged in identical classifications. The history of employee consideration indicates that the Municipal Employer has considered teachers teaching more than 50% of the regular schedule to be different and separate from those teaching less and that those in the former group have a community of interest which is substan-

teaching less than that schedule. We therefore have established a voting group consisting of all regular full time day school faculty personnel having the classification of Classroom Teachers V through I and all part time teachers teaching at least 50% of the regular teaching schedule to determine whether or not said employees desire to constitute a bargaining unit separate and apart from the other teaching personnel who teach less than 50% of the regular teaching schedule. If a majority of the eligible employees in said voting group vote to constitute themselves a separate unit they shall be so considered.

In Appleton Water Commission, supra, we held that if the Board were to find that a group of employees constituted a separate division, department or plant that we would, where practical, eliminate the ballot on the unit question and that if the employees in the separate division, department or plant voted for the organization which desired the separate unit said group of employees would constitute a separate collective bargaining unit. Such a procedure was followed in the recent elections conducted among employees of the Bureau of Public Works of the City of Milwaukee. However we do not think the elimination of the ballot on the unit question is practical or desirable in the instant proceeding since both organizations do not claim to represent all employees of the Municipal Employer and further since the desires as to the unit are conflicting.

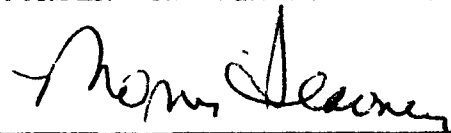
To expedite this proceeding, especially in light of the fact that the school year is drawing to a close, the Board shall conduct the vote on the unit question and on the selection of the bargaining representative on the same date. The questions will be posed on two separate ballots. Since the Association indicated that it desired to be included on the ballot of any vote conducted by the Board, the choices on the representation ballot will include

a choice for either the Union, the Association or no labor organization. The ballots with respect to the unit determination will be counted first. If the majority of the eligible employees do not establish a separate bargaining unit, then the Board will impound the votes on the selection of the representative and dismiss the petition of the Union.

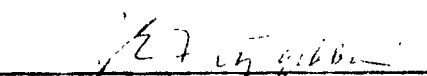

Dated at Madison, Wisconsin this 14th day of May, 1963.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By



Morris Slavney, Chairman


J. E. Fitzgibbon, Commissioner
Arvid Anderson, Commissioner