

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WAUWATOSA BOARD OF VOCATIONAL AND
ADULT EDUCATION

Case I
No. 11438 ME-307
Decision No. 8158

Mr. Dominic Frinzi, Attorney at Law, for the Petitioner.
Lamfrom, Peck, Ferebee & Brigden, Attorneys at Law, by
 Mr. Willis B. Ferebee, for the Employer.

Wauwatosa Driver Education Teachers Association, having filed a petition with the Wisconsin Employment Relations Commission, pursuant to Section 111.70, Wisconsin Statutes, requesting that an election be conducted among driver education teachers in the employ of the Wauwatosa Board of Vocational and Adult Education to determine whether said employees desire to be represented for the purposes of conferences and negotiations by said Petitioner; and hearing in the matter having been conducted at Milwaukee, Wisconsin, on May 8, 1967, before Howard S. Bellman, Examiner; and the Commission having considered the testimony, arguments and briefs of Counsel, and being satisfied that the classification of employees desired to be included in a collective bargaining unit do not constitute a separate craft, division or department of said Municipal Employer, and therefore said desired collective bargaining unit cannot, and does not, constitute an appropriate collective bargaining unit within the meaning of Section 111.70, Wisconsin Statutes;

ORDERED

Given under our hands and seal at the
City of Madison, Wisconsin, this 23rd
day of August, 1967.

Zel B. Rice II, Commissioner

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MEMORANDUM ACCOMPANYING ORDER DISMISSING PETITION

The Wauwatosa Driver Education Teachers Association, hereinafter called the Petitioner, petitioned the Wisconsin Employment Relations Commission for a representation election, pursuant to Section 111.70 of the Wisconsin Statutes, among part-time and temporary full-time driver education instructors employed by the Wauwatosa Board of Vocational and Adult Education, hereinafter called the Vocational Board.

The Vocational Board hires professional school teachers from various public school systems in the Wauwatosa area to work as driver education instructors, both in the classroom and behind-the-wheel, on a part-time basis in the spring and fall, and on a temporary full-time or part-time basis in the summer. The number of driver education instructors employed averages approximately twenty, but varies from time to time depending on the number of potential students registered for driver education classes and the availability of instructors.

In addition, the Vocational Board hires approximately 60 additional part-time and temporary full-time instructors for other classes in its educational program, which includes manual arts, sewing, arts and crafts, foreign languages, business courses, upholstery and others. Some of these instructors are professional teachers, and some are not professional teachers but are people with a proficiency in one or more of the above areas.

The professional teachers are required to have a teacher's certificate from the state in order to pursue their primary occupations in other school systems. The driver education instructors, who are professional teachers and are therefore in possession of a teacher's certificate, are additionally required to have driver education certificates from the state in order to teach a driver's education course.

The Vocational Board maintains a list of potential driver education instructors, all of whom have at one time been previously employed by the Vocational Board for that purpose. When the need for driver education instructors is known, selection is made from that list on the basis of the number needed and the availability of the individual instructors. In the past some individuals on the list have turned down assignments as a driver education instructor because of conflicts in their teaching schedules with their primary employer, or because of military duty, attendance at summer school or vacation plans. Individuals who turn down assignments are kept on the list of potential instructors and have at other times been offered other assignments as driver education instructors which they have accepted when no conflict presented itself.

The Vocational Board raises the question "as to whether the driver education teachers are 'employees'" as contemplated by Section 111.70, Wisconsin Statutes. The Vocational Board maintains that work performed by driver education teachers is a blend of seasonal work, occasional work and casual employment for short periods of time. It points out that whether or not a position is accepted by a teacher who has previously taught driver education for the Vocational Board and whose name is included on the list maintained by the Vocational Board as potential instructors, is the choice of the individual instructor who accepts or rejects the offered position on the basis of his availability. Therefore, the Vocational Board argues that there "is not the normal stability or continuity of employment contemplated for employees of a bargaining unit under Section 111.70, Wisconsin Statutes."

The Vocational Board recognizes that in the cases cited in its brief, where temporary, casual, seasonal and occasional workers were excluded from bargaining units, a nucleus of full-time employees composed the majority of the bargaining unit in question, but argues that "where it is sought to establish a bargaining unit of all seasonal, occasional or casual employees . . . that in actuality such employees are not employees as contemplated under the provisions of Section 111.70, Wisconsin Statutes." The Vocational Board concludes:

"The question is not, therefore, which employees should be included or excluded, but rather whether any of them should be included or all excluded."

Petitioner argues that driver education instructors constitute a "unique classification" separate from other teachers employed by the Vocational Board and, as such, should be allowed to organize itself into a separate unit for purposes of collective bargaining in accordance with Sections 111.02(6) and 111.05(2) of the Wisconsin Statutes. By reference to those Sections of the Statute, and even though preferring the term "unique" classification, the Petitioner in fact maintains that driver education instructors are "engaged in a single craft, division, department or plant."

In support of its contention, Petitioner points to the fact that driver education instructors are desirous of a separate unit classification, have voluntarily associated themselves with the Petitioner and have had correspondence with the Vocational Board's representative, relative to wages, hours and working conditions, under that name. Petitioner argues that driver education instruction is a specialized field requiring a bachelor's degree in education from a university or college, a teacher's certificate from the state, additional credits of college work in Driver and Safety Education, and driver education licensure from the state. It maintains that other teachers employed by the Vocational Board are persons with skills of various sorts, some professional teachers, some not, and unlike the driver education instructors, they are not required to be certified solely for purposes of their employment with the Vocational Board.

The Vocational Board also opposes the petition on the basis that the driver education instructors, who comprise twenty of the total of eighty instructors hired by the Vocational Board, are not a profession, division or department separate from other instructors employed by the Vocational Board. The Vocational Board maintains that any unit of employes formed for purposes of collective bargaining should include all instructors in the employ of the Vocational Board. The Vocational Board contends that there is only one unit designation applicable to instructors employed at the school and that is "teachers."

The Vocational Board further maintains that there exists no grounds for separating driver education teachers from manual arts teachers or sewing teachers, or teachers of any other subject matter. It argues that the six additional credit-hours of college work required of driver education instructors is not of such a substantial nature as to distinguish a driver education instructor's division from the "teacher" professional group. Since the Petitioner does not seek to represent all teacher employes of the Vocational Board, the Vocational Board contends that the petition should be dismissed since driver education teachers do not constitute an appropriate bargaining unit.

The Vocational Board is a municipal employer, and therefore the issue as to whether the driver education teachers are employees within the meaning of the Wisconsin labor relations statutes must be determined by interpreting the Municipal Employer - Municipal Employee Labor Relations Law, Section 111.70 of the Wisconsin Statutes. The term "municipal employee" is defined in Section 111.70(1)(b) as "any employee of the municipal employer..." It is obvious, therefore, that the driver education teachers are employees within the meaning of said Section, regardless of the "temporary," "casual," "seasonal," "occasional" or "regularity" of their employment.

Section 111.70(4)(d) provides that craft employees must be included in a single unit of employees in the same craft. The Commission has held that teachers engaged in the performance of their profession constitute "craft" employees within the meaning of the Statutes.^{1/} The Commission agrees with the Vocational Board's contention that it can no more divorce driver education teachers from other teachers employed by the Vocational Board than it can separate science teachers from english teachers or manual arts teachers from sewing teachers. The Commission further agrees that six additional credits of college work and a certificate from the state is not sufficient to distinguish driver education teachers from other teachers. Teachers in any school system might be distinguished in a number of ways by college credits obtained beyond the undergraduate level and certificates held. It was not contemplated, for example, that there would be one teacher's profession for holders of the Bachelor's degree and a separate profession for holders of a Master's degree. The Commission finds that driver education teachers and other teachers employed by the Vocational Board are of one profession - "teachers."

The final question is, if driver education teachers are not a profession separate from other teachers, can they be construed as a separate division or department among teachers. The Commission cannot find that they are. To do so it would have to find that the interests, terms and conditions of employment among driver education teachers and other teachers are substantially different. In this case both groups operate in the same geographical proximity, answer to the same Director, participate in the same vocational program, and receive the same wage for

^{1/} Milwaukee Board of Vocational and Adult Education (6343) 5/63.

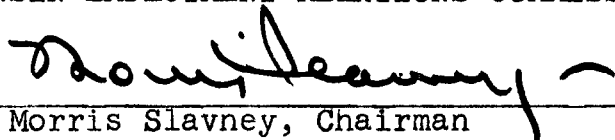
classroom work. Nor can the Commission differentiate between the two groups on the basis of the tools employed in their work. It is agreed that the blackboard employed by language teachers, for instance, differs from the automobile employed by driver education teachers in the behind-the-wheel phase of their instruction. But so are they both different from the sewing machine used by the sewing teacher and the lathe used by the manual arts teacher. In each case there is but one primary tool used in their vocation - the ability to teach.

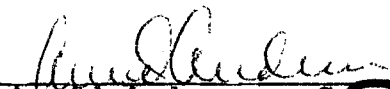
Since the driver education teachers do not constitute a separate profession, division or department of the Vocational Board, they cannot, in any event, constitute an appropriate collective bargaining unit, and since the Petitioner has limited the unit in its petition to consist of only driver education teachers, we must dismiss the petition on the basis that the unit sought is not appropriate for purposes of conferences and negotiations as contemplated in Section 111.70 of the Wisconsin Statutes.

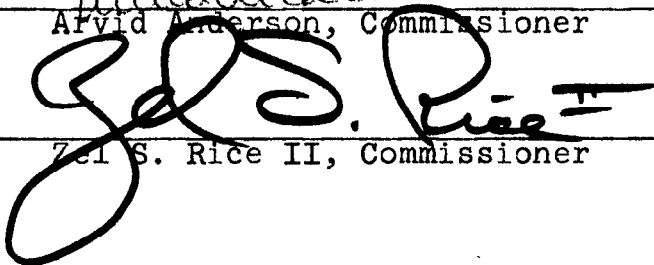
Dated at Madison, Wisconsin, this 23rd day of August, 1967.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Arvid Anderson, Commissioner


Zel S. Rice II, Commissioner