

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
WISCONSIN FEDERATION OF TEACHERS : Case I
Involving Certain Employes of : No. 11833 ME-358
MADISON VOCATIONAL, TECHNICAL AND : Decision No. 8382-A
ADULT SCHOOL :
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Appearances:

Mr. William Kalin, Executive Director, Wisconsin Federation of Teachers, appearing on behalf of the Union.
Lee, Johnson & Kilkelly, S.C., Attorneys at Law, by Mr. Donald D. Johnson, appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

Madison Area Technical College Teachers Union, Local 243, AFT, WFT, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission to determine whether certain employes should be included or excluded from an existing collective bargaining unit consisting of "all professional teachers, teaching at least 50% of a normal teaching schedule, employed by Madison Area Technical College, excluding all other employes, supervisors and executives"; and a hearing on said petition having been held on December 12, 1978 at Madison, Wisconsin, before Examiner James D. Lynch; and post-hearing briefs having been received by the Examiner on January 22, 1979; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the Madison Area Technical College Teachers Union, Local 243, AFT, WFT, AFL-CIO, hereinafter referred to as the Union, is a labor organization, as defined by Section 111.70(1)(j), Wis. Stats., and has its offices at 211 North Carroll Street, Madison, Wisconsin.

2. That the Madison Area Vocational, Technical, Adult Education District #4, hereinafter referred to as the Employer, is a municipal employer, as defined by Section 111.70(1)(a), Wis. Stats., and has its administrative offices at 211 North Carroll Street, Madison, Wisconsin.

3. That on March 4, 1968, the Wisconsin Employment Relations Commission certified the Union as the representative of certain professional employes in a collective bargaining unit consisting of all professional teachers, teaching at least 50% of a normal teaching schedule, employed by Madison Area Technical College, excluding all other employes, supervisors and executives.

4. That collective bargaining agreements negotiated thereafter including the existing bargaining agreement between the Union and the Employer for the period July 1, 1977 through June 30, 1979, contained the following bargaining unit description: "The Board recognizes the Union as the sole and exclusive bargaining representative of all contractual teachers in Area Vocational, Technical and Adult Education District #4. Contractual teachers are defined as professional classroom teachers, teaching at least 50% of a normal teaching schedule, employed by the Board and excluding administrative, supervisory, ancillary and classified employes."

5. That in its petition initiating the instant proceeding, the Union seeks the inclusion of various government project employees and ancillary employees in the collective bargaining unit.

6. That the municipal employer, during the course of hearing, has taken the position that ancillary employees should be excluded because they do not share a community of interest with other individuals in the collective bargaining unit and, further, the municipal employer takes the position that they may not be included as they are specifically excluded by the Collective bargaining agreement's terms; that in addition thereto, the municipal employer takes the position that ancillary employees are supervisors, within the meaning of Section 111.70(1)(b) and 111.70(1)(a) Wis. Stats., and that they should be excluded on this basis from the collective bargaining unit; that the individuals occupying the ancillary positions in dispute are Richard Badger, Student Services Counselor, Carl Brick, Student Services Coordinator, Arthur Caturani, Librarian, Edmund Erickson, Student Services Counselor, Cynthia Gurdsmith, Student Services Counselor, Richard Grum, Instructional Media Consultant, Robert Gwinn, Student Services Counselor, Richard Harris, Affirmative Action Officer, Janet Jeffcott, Assistant Librarian, Carl Jensen, Student Services Counselor, Douglas Redsten, Athletic Director/Mathematics Instructor, Karen Roberts, Student Services Counselor and Warner Schueppel, Data Processing Supervisor.

7. That during the course of the hearing, the municipal employer has taken the position that government project employees should be excluded because they do not share a community of interest with classroom teachers and, further, that government project employees should be excluded because they have different teaching schedules, have historically been excluded and are compensated by a different governmental source of funding; that the municipal employer employs in the instructor classification, the following government project employees for the stated number of hours weekly: Mary Draxler - 30 hours, Charlene Ohnstad - 30 hours, Agnes Peterson - 2 1/2 hours, Jean Orellana - 40 hours, Marian Hams - 40 hours, Gunhild Boswell - 19 hours, George Goldman - 19 hours, Sharon Lembke - 19 hours, Judith Koehler - 40 hours, Richard Mueller - 18 hours, Robert Mountford - 20% of those hours required by a contract teacher, Richard Klecker - 20% of those hours required for a contract teacher, Jan Bigalke - 40 hours, Charles Brown - 40 hours, Charlotte Miura - 19 hours, Sandra Mogul - 19 hours, Alice Hendrickson - 16 hours, Ethlyn Rostallan - 10 hours, N. Jean Tyler - 10 hours, Judith Schelble - 10 hours, Janet Yoder - 5 hours, Mary Lacy - 4 hours, Rita O'Connor - 10 hours, Daniel Wiltrout - 4 hours, Virginia Block - 19 hours, Carol Hunn - 4 hours, William Buckingham - 40 hours, Nancy Bornstein - 40 hours, and Grace Larson - 19 hours; that said employees are required to be certified in accordance with State Vocational Technical & Adult Education requirements and perform work of a professional nature.

8. That the municipal employer employs the following governmental project employees in the following classifications for the state number of hours weekly: Gerald Lamers - Counselor - 40 hours, Veronica Butler - Counselor - 40 hours, Richard Harris - Recruitment Officer - number of hours required of a contract teacher, Steward Flaxman - Training Coordinator - 40 hours; that said employees perform work of a professional nature.

9. That the municipal employer employs in the paraprofessional classification, the following government project employees for the stated number of hours worked weekly: Thanh Van Le - 19 hours, Bobbie Toney - 19 hours, Lucy Rork - 40 hours, Mary Ann Calloway - 40 hours, Rosemary Smith - 6 hours, Sandra Raasoch - 6 hours, Violet Tully - 12.5 hours, Beth Buchta - 12.5 hours; that the municipal employer employs the following student help employees who are considered to be paraprofessionals: Olivet Brumfield, Deborah Bruner, Debbie Carlstrom, Sue Gordon, Tammy Tesmer, Ruth Weber, and Amy Whitcomb; that said employees are not professional employees.

10. In addition, the municipal employer employs the following government project employees in the following classifications for the stated number of hours weekly: Eual Jackson - clerk typist - 40 hours, Marilyn Scholey - clerk typist I - 40 hours, and Georgann Rimkus - secretary I - 40 hours; that said employees are not professional employees.

11. That ancillary employees are professional employees, not employed as teachers within the meaning of our certification, who were excluded by the Commission and the parties hereto from the instant collective bargaining unit and who may not properly be clarified into said unit, without a vote.

CONCLUSIONS OF LAW

1. That ancillary employees may not properly be clarified into the instant collective bargaining unit.

2. That the individuals employed as government project employees in the instructor classification who teach at least 50% of a normal teaching load are professional employees who perform teaching duties and share a sufficient community of interest with other employees in the bargaining unit so as to warrant their inclusion in said unit; that the individuals employed as government project employees in the counselor, recruitment officer and training coordinator classifications or in the instructor classification who work less than 50% of a normal teaching schedule are not employed as teachers teaching at least 50% of a normal teaching schedule within the meaning of our certification and should not be accreted into said unit.

3. That government project personnel employed in the classifications of paraprofessional, clerk typist, clerk typist I, and Secretary I are not professional employees and, thus, may not be included in the collective bargaining unit.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and it issued the following

ORDER CLARIFYING BARGAINING UNIT

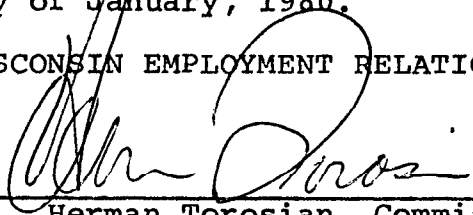
1. That the individuals employed as ancillary employees, and government project employees in the paraprofessional, clerk typist, clerk typist I and secretary I classifications, as well as government project employees in the counselor, recruitment officer and training coordinator classifications and in the instructor classification who teach less than 50% of a normal teaching schedule shall be and hereby are excluded from the unit described above in Finding of Fact No. 3.


2. That the individuals employed as government project employees in the instructor classification who teach more than 50% of a normal teaching schedule shall be, and hereby are, included in the unit described above in Finding of Fact No. 3.

Given under our hands and seal at the
City of Madison, Wisconsin this 29th
day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

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

On March 4, 1968, the Commission certified the following collective bargaining unit:

"all professional teachers, teaching at least 50% of a normal teaching schedule, employed by Madison Area Technical College, excluding all other employees, supervisors and executives"

Subsequent thereto, the parties in their collective bargaining agreement described the unit in the following fashion:

"The Board recognizes the Union as the sole and exclusive bargaining representative of all contractual teachers in Area and Vocational, Technical and Adult Education District #4. Contractual teachers are defined as professional classroom teachers, teaching at least 50% of a normal teaching schedule, employed by the Board and excluding administrative, supervisory, ancillary and classified employees."

The Union filed the instant petition requesting inclusion of ancillary employees and federal project employees in various classifications with the Commission on September 29, 1978.

Initially, we note that the petition filed by the Union seeks inclusion of government project employees in the paraprofessional, clerk typist I and secretary I classifications. It is undisputed that the individuals occupying these positions are not required to possess advanced degrees, nor do they perform work which requires the exercise of discretion and judgement. Accordingly, these individuals are not professional employees within the meaning of Section 111.70(1)(1). Therefore, said individuals must be excluded from the unit as it is well-established that non-professionals may not be included in a professional bargaining unit unless the latter group first votes to allow their inclusion. 1/

Next, we turn our attention to the municipal employer's assertion that the collective bargaining agreement's exclusion of ancillary employees acts to bar this proceeding. Ancillary staff members are employed in the following positions: student services counselor, student services coordinator, librarian, instructional media consultant, affirmative action officer and data processing supervisor. It is undisputed that these individuals occupying these positions perform work of a professional nature. Upon a review of the eligibility list in the original election, the stipulated unit description specifying the unit as "... all professional teacher teaching at least 50% of a normal teaching schedule ..." 2/ and the parties' subsequent contracts which recognize the union as the exclusive bargaining representative for contractual teachers defined as "... professional classroom teachers, teaching 50% of a normal teaching schedule . . . and excluding ancillary employees", we are persuaded that the parties intended to limit the unit to only individuals performing teaching duties. The record establishes that both ancillary employees

1/ See Section 111.70(4)(b)2d, Stats.

2/ Madison Area Technical College, No. 8382 (1/68).

and government project employees in the counselor, recruitment officer and training coordinator classifications do not perform teaching duties. Therefore these positions have been voluntarily excluded from the unit by the parties. The Commission will not expand a collective bargaining unit without an election in the unit deemed appropriate where certain classifications of employees have been implicitly or explicitly excluded from the unit; a party involved in the recognition agreement opposes that proposed expansion; the original exclusion was not based on statutory grounds; the unit is not repugnant to the provisions of the Municipal Employment Relations Act and there has not been any intervening events which would materially affect the status of the affected employees. 3/ Where these conditions have been met, the Commission will recognize an overall unit if the union petitions for an election in an overall unit consisting of all represented and unrepresented professional employees, if the Commission deems the overall unit appropriate and if the union wins a majority of the eligible voters in the entire unit. 4/ In the alternative, the Commission will recognize a residual unit if the union petitions for an election among a residual unit comprised of all unrepresented professional employees; the Commission deems the residual unit appropriate; and the union wins a majority of the eligible voters in the residual unit. If the union appears on the ballot in the residual unit election and a majority of the eligible voters vote for representation by said union, the Commission will merge the residual unit with the overall professional unit. 5/ The Commission will not, however, order an "accretion election," whereby some, but not all, of the unrepresented employees exclusively vote on their desire to accrete to an existing unit. 6/ In view of our determination herein that ancillary employees may not be included in the unit by means of a clarification proceeding we deem it unnecessary to reach the issue of whether various ancillary employees are supervisors or managers who, therefore, must be excluded from the unit.

Thus, we turn our attention to government project employees in the instructor classification. Government project employees in the instructor classification include: business instructor, teacher/coordinator-instructional learning center and ABE program, basic instructor for handicapped adults, instructor in the instructional learning center project, adult basic education instructor, and instructor in cooperative food service project-handicapped. The individuals occupying these positions are required to be certified in accordance with State VTAE requirements and perform work of a professional nature.

However, the municipal employer raises numerous objections to including these classifications in the collective bargaining unit. First, it argues that the Commission should be precluded from clarifying these positions into the unit because government project employees salaries are funded by monies the government has allocated for providing specific programs as opposed to being funded by local property taxes. This argument must be rejected for this Commission has long held that the source of funding is not a sufficient cause for excluding otherwise eligible

3/ City of Cudahy (12997) 9/74; Fox Valley Technical Institute (13204) 12/74; Milwaukee Board of School Directors (13134-A) 1/76; City of Rice Lake (Fire Department) (16413) 6/78.

4/ Fox Valley Technical Institute (13204) 12/74; River Falls Joint School District No. 1 (13804-A) 10/76; Amery Joint School District No. 5 (15793-A, 15794-A) 4/78.

5/ Fox Valley Technical Institute (13204) 12/74.

6/ Sheboygan Joint School District (12897) 7/74; Fox Valley Technical Institute (13204) 12/74; Manitowoc County (Health Care Center) (13894) 8/75.

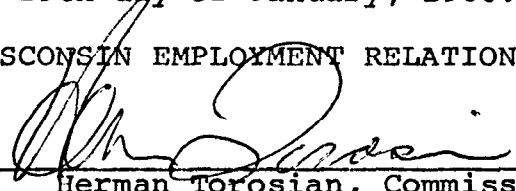
employees from a bargaining unit. 7/ Second, the municipal employer argues that should the Commission include these employees in the unit, the labor contract would automatically apply to them and the attendant cost would be prohibitive. However, that argument is incorrect as the terms and conditions contained in the contract do not automatically apply to individuals clarified into the unit. Rather, the parties are to enter into negotiations to determine what the wages, hours and working conditions of these employees shall be. 8/ Lastly, the municipal employer argues that due to the differing time basis in which government project instructors perform their teaching duties they do not teach a "normal teaching schedule" like those taught by classroom teachers and, thus, do not share a sufficient community of interest to warrant inclusion in the bargaining unit. While it is true that instructors in the government project area teach students on a more flexible schedule than do their classroom counterparts, this does not alter that fact that they perform teaching duties as do classroom teachers. Accordingly, their differing teaching schedules do not dictate the conclusion that these instructors do not share a community of interest with other bargaining unit members.

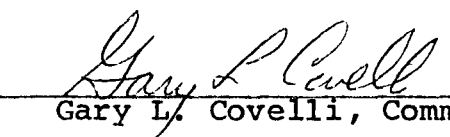
Thus, as instructors in the government project area perform professional teaching duties and receive fringe benefits similar to those provided to contractual teachers including hospitalization insurance, long term disability insurance, life insurance, sick leave and participation in the State Teacher's Retirement System, we find that they do share a community of interest with other members of the bargaining unit and are appropriately included therein. However, in conformity with the definition contained in our earlier unit description, individuals occupying these positions who work less than 50% of a normal teaching schedule are hereby excluded.

Dated at Madison, Wisconsin this 29th day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

7/ Kenosha VTAE District, No. 14381 (3/76); City of Beloit, No. 15112 (12/76).

8/ Milwaukee Board of School Directors, No. 14614-A (1/77); Madison Metropolitan School District, No. 14161-A (1/77).