

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
COUNCIL 40, WISCONSIN COUNCIL OF
COUNTY & MUNICIPAL EMPLOYEES,
AFSCME, AFL-CIO

For Determination of Bargaining
Representatives for Employees of

JOINT SCHOOL DISTRICT #1 - CITY OF
WEST BEND; VILLAGE OF JACKSON; TOWNS
OF ADDISON, BARTON, WEST BEND, TRENTON,
JACKSON AND POPE, COUNTY OF WASHINGTON,
WISCONSIN

Case III
No. 12083 ME-373
Decision No. 8648

DIRECTION OF ELECTIONS

Council 40, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission on April 8, 1968, to conduct an election pursuant to Section 111.70, Wisconsin Statutes, among certain employees of Joint School District #1 - City of West Bend; Village of Jackson; Towns of Addison, Barton, West Bend, Trenton, Jackson and Pope, County of Washington, Wisconsin; and a hearing on such petition having been conducted at West Bend, Wisconsin, on May 7, 1968, before Byron Yaffe, Hearing Officer, and the Commission having considered the petition, the evidence and arguments of counsel and being satisfied that questions have arisen concerning the appropriate collective bargaining unit and concerning representation for certain employees of Joint School District #1 - City of West Bend; Village of Jackson; Towns of Addison, Barton, West Bend, Trenton, Jackson and Pope, County of Washington, Wisconsin;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot be conducted by the Wisconsin Employment Relations Commission within thirty (30) days from the date of this direction in the following voting groups for the following stated purposes:

Voting Group No. 1

All regular full-time and regular part-time employees working at least four hours per day, employed in the Hot Lunch Program of Joint School District #1 - City of West Bend; Village of Jackson; Towns of Addison, Barton, West Bend, Trenton, Jackson and Pope, County of Washington, Wisconsin, excluding supervisors, who were employed by the Municipal Employer on August 8, 1968, except such employees as may prior to the election quit their employment or be discharged for cause, for the purposes of determining

1. Whether a majority of such employees eligible desire to constitute themselves a separate collective bargaining unit; and
2. Whether a majority of such employees voting desire to be represented by Council 40, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purpose conferences and negotiations with the Municipal Employer on questions of wages, hours and conditions of employment.

Voting Group No. 2

All regular full-time and regular part-time non-professional employees working at least four hours per day, employed by Joint School District #1 - City of West Bend; Village of Jackson, Towns of Addison, Barton, West Bend, Trenton, Jackson and Pope, County of Washington, Wisconsin, excluding non-professional employees in the Hot Lunch Program, supervisors and confidential employees as defined in the Act, who were employed by the Municipal Employer on August 8, 1968, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by Council 40, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purpose of conferences and negotiations with the Municipal Employer on questions of wages, hours and conditions of employment.

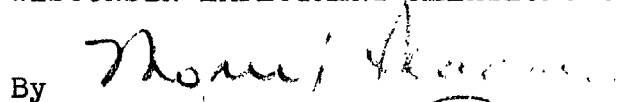
IT IS FURTHER DIRECTED that should the conduct of the unit determination election in Voting Group No. 1 not result in the establishment of a separate collective bargaining unit, then the collective bargaining unit shall consist of all regular full-time and regular part-time non-professional employees working at least four hours per day, employed by Joint School District #1 - City of West Bend; Village of Jackson; Towns of Addison, Barton, West Bend, Trenton, Jackson and

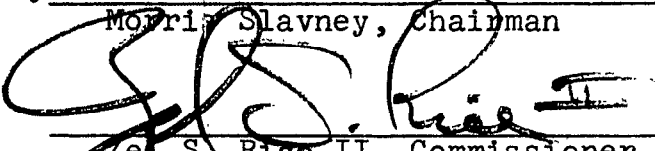
Pope, County of Washington, Wisconsin, (including the non-professional employees in the Hot Lunch Program), excluding supervisors and confidential employees as defined in the Act, and that the results of the balloting in both voting groups with respect to representation shall be combined and tallied by the Commission for the purpose of determining whether a majority of such employees in the overall unit desire to be represented by Council 40, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purpose of conferences and negotiations with Joint School District #1 - City of West Bend; Village of Jackson; Towns of Addison, Barton, West Bend, Trenton, Jackson and Pope, County of Washington, Wisconsin, on questions of wages, hours and conditions of employment.

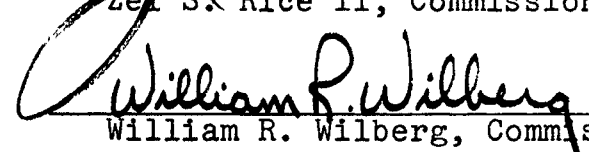
Given under our hands and seal at the
City of Madison, Wisconsin, this 8th
day of August, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

STATE OF WISCONSIN
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Case III
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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

In its petition the Union requested the establishment of a bargaining unit including all regular full-time and regular part-time custodial and maintenance employees, laundry workers, cooks and food servers, but excluding the superintendent, business manager, clerical employees, professional employees and supervisors as defined by the Act. At the outset of the hearing the Union amended its petition to establish two units, one of custodial and maintenance employees including laundry workers, and the second of employees in the Municipal Employer's "Hot Lunch Program", referred to in the petition as cooks and food servers.

The Municipal Employer takes the position that the custodial and maintenance and laundry unit is an inappropriate one since it does not reflect any separate division, department, or craft, a condition necessary for a separate unit under the statutes. With respect to the "Hot Lunch Program" unit, the Municipal Employer recognizes this as a separate department and therefore as appropriate for a separate unit vote. The parties stipulated that in the "Hot Lunch Program" unit and in whatever other unit the Commission deems appropriate, part-time employees would be included so long as they regularly work at least four hours per day.

The Municipal Employer takes the position that if the election is not to be conducted among all of the employees of the Municipal Employer, there should be separate unit votes in accordance with the Municipal Employer's departmental organization. He cites five departments which encompass employees at all of the Municipal Employer's nine schools. First is the so-called "miscellaneous services" department which consists of four employees, three full-time and one part-time, all of whom are responsible to the business manager of the district. The parties stipulated that within this grouping only the business manager is a supervisor. The Union would regard each of the four non-supervisory employees as falling within the unit of custodial, maintenance and laundry employees. One is responsible for the store room and driving a school bus. A second is responsible for the mail and distribution of supplies, and the remaining two are employed in the laundry.

The second grouping is the so-called "building and grounds" department, consisting of six employees, all of whom are responsible to the supervisor of buildings and grounds. The supervisor's office is at the high school, and each of the employees reports to him at his office. The parties stipulated that the supervisor of buildings and grounds is the only supervisor within this grouping. The remaining employees consist of two full-time and one part-time maintenance men who do maintenance work all over the district and two full-time and one part-time outside men who are responsible for ground keeping all over the district.

The third grouping is the so-called "hot lunch program" department and the parties have stipulated that this is a separate department and that the employees therein should be entitled to a separate unit vote. The employees there are in the classification of baker, cook, server, cashiers and dishwashers.

The fourth grouping is the so-called "central office and instruction supervisors" department. The central office is administered by the superintendent, assistant superintendent, and business manager. Responsible to them are three full-time secretaries, one full-time bookkeeper, one full-time machine operator and one part-time clerk-typist. The instruction supervisors are the director of special services and the director of instruction. They have under them three part-time secretaries, one of whom, the secretary to the assistant superintendent, the parties stipulated was a confidential employee. The Union does not seek to represent employees within this grouping since it considers none of them to be custodial, maintenance or laundry.

The final grouping is the so-called "individual school staff" department which consists of the staff at each of the nine schools. All of the employees in each school, be they secretarial or custodial employees, are responsible to the principal of that school for their hiring, supervision and evaluation. The staffing of each school is indicated as follows:

INDIVIDUAL SCHOOL STAFFS

High School - Responsible to Principal - Enrollment 1213

- 1 - Secretary - Full time
- 2 - Clerk typist - Full time
- 3 - Clerk typist - 8 hrs. 10 months - 1 @ 5 hrs.
- 2 - Clerical Aides - 1 - 7-1/2 hrs. 1 - 7 hrs.
- 3 - Instructional Assistants - 1 - 1 day per week,
1 - 5-1/4, 1 - 6-1/2 hr. per day
- 1 - Head Custodian
- 4 - Custodians Full Time
- 2 - Part time Custodians - 4 hrs. per day each

Silverbrook School - Responsible to Principal - Enrollment 1083

- 1 - Secretary - Full time
- 1 - Clerk Typist - 7 hrs. per day 10 months
- 1 - Clerk Typist - 6-1/2 hrs. per day
- 4 - Clerical Aides - 2 - 6 hrs. 2 - 7 hrs.
- 2 - Supervisor of Study Hall - 1 - 5 hrs., 1 - 6 hrs. per day
- 1 - Head Custodian
- 2 - Custodians Full Time
- 3 - Part time custodians (2) @ 4 hrs., (1) @ 5 hrs.

McLane School - Responsible to Principal - Enrollment 636

- 1 - Instructional Assistant 4 hrs. per day
- 1 - Secretary - 8 hrs. per day - 10 months
- 3 - Clerical Aides - 4 hrs. per day each
- 1 - Head Custodian
- 1 - Full time custodian
- 3 - Part time custodians - (2) @ 5 hrs., (1) student @ 3 hrs.

Barton School - Responsible to Principal - Enrollment 466

- 1 - Secretary - 8 Hrs. per day - 10 months
- 2 - Clerical Aides - (1) @ 5 hrs., (1) @ 7 hrs.
- 1 - Instructional Assistant @ 6 hrs. per day
- 1 - Head Custodian
- 1 - Part time Custodian - 4 hrs.

Decorah School - Responsible to Principal - Enrollment 303

- 1 - Secretary - 8 hrs. per day - 10 months
- 1 - Clerical Aide - @ 4 hrs.
- 1 - Head Custodian
- 1 - Part time Custodian @ 2-1/2 hrs.

Fair Park School - Responsible to Principal - Enrollment 437

- 1 - Secretary - 8 hrs. per day - 10 months
- 1 - Clerical Aide @ 6 hrs. per day
- 2 - Instructional Assistant - (1) @ 3-4 hrs., (1) @ 7-1/2 hrs. per day
- 1 - Head Custodian
- 2 - Part time custodians - students @ 3 hrs. per day

Jackson School - Responsible to Principal - Enrollment 276

- 1 - Secretary - 4 hrs. per day - 10 months
- 1 - Instructional Assistant - 6-1/2 hrs. per day
- 1 - Custodian Full time

Oak Knoll School - Responsible to Principal - Enrollment 90

- 1 - Clerical Aide @ 1-3/4 hrs. per day
- 1 - Part time Custodian as work requires - less than 4 hours

Luther House - Responsible to Principal - Enrollment 12

- 1 - Part time custodian - Hours as work requires - less than 4 per day

There is no interchange to speak of between custodial and maintenance employes on the one hand and clerical employes or between either of these groups and food service employes. There is some limited interchange of employes within custodial and maintenance classifications. The example given by the Employer is that an outside man during the winter time when there is no snow to shovel or grass to cut will assist in either the maintenance or custodial area, and in that case he would be under the supervision of the principal in the building in which he was working.

Each school has a classification denoted as "head custodian," and in addition, full-time and part-time custodians. The training of custodial employes is done informally within each of the schools. Their training would enable them to be interchanged from school to school if necessary, but not from a custodial classification to a maintenance classification.

All of the employes have the same fringe benefits, i.e., sick leave, retirement, life insurance and health insurance. The only difference is in vacation benefits, since twelve-month employes are entitled to vacations, while those who work ten months or the school term are not. All employes also have the same overtime benefits, time-and-a-half after 42 hours duty. There is also a difference in the hours worked by employes, since some custodial employes work in the evening, and some normally work on Saturdays, all employes do not have the same starting time in the morning, and part-time employes have no set starting time.

While the principal of each school officially supervises all non-professional employees in the school, the custodial employees are directed in some of their work by the head custodian and the clerical employees are directed in some of their work by members of the teaching staff.

Section 111.70(4)(d), Wisconsin Statutes, states as follows:

"Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employees of the employer, either the union or the municipality may petition the board to conduct an election among said employees 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,..."

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..."

Accordingly, under Section 111.70, Wisconsin Statutes, if the appropriate unit is to be one of less than all of the employees of the Municipal Employer, said smaller unit must constitute either a separate department, division or craft. In the case at hand there is no claim that the employees involved are craft employees. However, the Commission has been asked to determine which groups of employees constitute separate divisions or departments for purposes of deciding whether or not they desire separate bargaining units. The parties themselves have stipulated that the "hot lunch program" employees would constitute an appropriate separate departmental unit if the employees in that department so decide, and accordingly, the employees in the "hot lunch program" department will be given the opportunity to determine whether or not they wish to constitute themselves a separate bargaining unit.

In Gimbel Bros. Department Store^{1/} the Commission set forth the legislative intent of the statutory provision permitting a division to constitute a separate bargaining unit:

"The aim of the Legislature, we feel, was to enable employees having similar problems and working under similar conditions, which problems and conditions differed from other problems and conditions of the employees, to bargain together as a separate collective

^{1/} Decision No. 251, 4/41.

bargaining unit. There must, however, be something more than an arbitrary division--either in actual physical separation or some difference in working conditions that will divide the employees into natural groups."

The criteria which the Commission utilizes in determining whether employees are engaged in a separate division or department include the employees' working conditions, their work location, their duties and functions, and their supervision.^{2/} Utilizing these criteria, it would appear that the custodial and maintenance employees petitioned for by the Union do not constitute a separate division or department of the Municipal Employer. The record indicates that custodial and maintenance employees do not have distinct working conditions, but instead receive essentially the same benefits as other non-professional employees in the school system. The custodial employees do not have common supervision, since the principal in each school has complete supervisory responsibility over the custodial employees in his school. In addition to supervising the custodial employees, the principal also has supervisory responsibility for clerical and other non-professional employees in the school(s) he administers. Furthermore, the maintenance employees have separate supervision, since they are responsible to the Supervisor of Buildings & Grounds; and the employees in Miscellaneous Services are also separately supervised by the Business Manager. The record also indicates that the custodial and maintenance employees do not work in a common separate location, but instead work throughout the school system. Lastly, there is only limited interchange of employees in the custodial and maintenance classifications.

Based upon all of the foregoing, it appears that the Municipal Employer has considered and treated the custodial and maintenance employees as part of an overall non-professional employee group and not as a separate department or division. Accordingly, the Commission concludes that the custodial and maintenance employees, including the laundry workers, do not have sufficient special interests or differences in working conditions to justify classifying such employees as a department or division, entitling them to a separate unit vote.

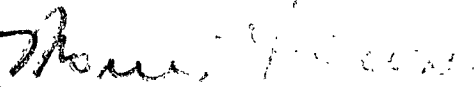
^{2/} Methodist Hospital, Dec. No. 8506-A, 8507-A and 8508-A, 7/68; St. Michael's Hospital, Dec. No. 8005, 4/67; Dodge County, Dec. No. 6067, 7/62.

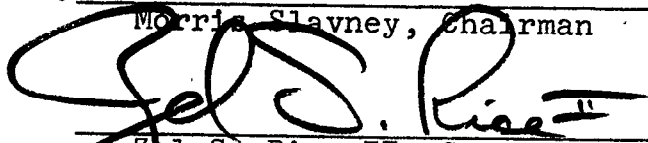
The Commission also concludes that the employees in the four alleged departments or divisions listed by the Municipal Employer, in addition to the "hot lunch program" department, do not have distinct and separate communities of interest which would justify a finding that they constitute separate departments or divisions for purposes of establishing separate bargaining units. While each of these groupings of employees may have separate supervision and distinct duties, it would appear from the record that they essentially have common interests and working conditions, and are treated in a uniform manner by the Municipal Employer. We, therefore, conclude that all non-professional employees of the Municipal Employer should be included in the same collective bargaining unit, unless the employees in the "hot lunch program" department themselves establish a separate bargaining unit. To find otherwise would, in the Commission's opinion, fragmentize the non-professional employees in the employ of the school system based upon artificial and arbitrary delineations which would frustrate the intent and purpose of Section 111.70.

Dated at Madison, Wisconsin, this 8th day of August, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner