
BOARD OF SCHOOL DIRECTORS OF THE
CITY OF MILWAUKEE,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Respondent.

#127-257

MEMORANDUM DECISION

BOARD OF SCHOOL DIRECTORS OF THE
CITY OF MILWAUKEE,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Respondent.

#127-435

These are actions commenced pursuant to Chapter 227, Stats., to review orders made and entered by the Wisconsin Employment Relations Commission.

The Milwaukee Teachers Education Association petitioned the Commission for certification of a bargaining unit for substitute teachers. These persons are recruited as substitutes for regular teachers during periods of their absence in the Milwaukee Public School system. Each year a list is compiled of those who are available for such work. No contract is entered into between the Board and the listed persons, nor is there any guarantee that they will be used during the school year for even one day or more. The individuals listed are rated on the basis of experience and training. The great majority of those on the list do not meet the necessary requirements for full-time teachers in the Milwaukee system but are given a special permit by the State Department of Public Instruction.

The Commission determined that the substitute per diem teachers were employees and not individual contractors within the meaning of sec. 111.70, Wis. Stats., and, therefore, entitled to be represented for the purpose of collective bargaining. It was further decided that a unit consisting of only substitute per diem teachers was an appropriate collective bargaining unit and that those substitute teachers teaching at least thirty days of the school year are deemed to be regular employees either full time or part time and eligible to vote. After an election conducted by the Commission to determine whether the Association would represent the unit, it was certified that the Association was selected by a majority of the eligible persons as their collective bargaining representative with the municipal employer.

It is now contended by the petitioner in both cases that the Commission erred in making its decision and certification because the substitutes are independent contractors and not employees within the meaning and intent of sec. 111.70, Stats., and that such employees do not constitute an appropriate collective bargaining unit.

Sec. 111.70(1)(b), Stats., provides:

"(1) Definitions. When used in this section:

"(b) 'Municipal employe' means any employe of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers."

Sec. 111.70(2), Stats., provides:

"(2) Rights of Municipal Employes. Municipal employes 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 employes shall have the right to refrain from any and all such activities."

The proper standard of review in this case is whether there is a supportable basis for the conclusions reached by the Commission and whether its conclusion is consistent with the purpose of sec. 111.70, Stats. In Milwaukee v. WERC, 43 Wis. 2d 596, 601, our Court stated:

"In applying the standards to this case, it should be noted that the application of the municipal employment law (sec. 111.70, Stats.) is one of the areas of the law requiring expertise. Therefore, the only determination this court should make is whether the WERC's interpretation of 'municipal employe' is consistent with the purpose of sec. 111.70."

The Court further said, at page 601:

"The broad definition of 'municipal employe' found in sec. 111.70, Stats., clearly indicates a legislative desire to make collective bargaining units available for as many municipal employes as is consistent with sound municipal government."

This court cannot say that the Commission's determination is neither without reason nor inconsistent with the purposes of the statute.

From the facts in these cases, it is readily apparent that substitute teachers are, in fact, employees of the School Board. The "right of control" test used by the Commission in arriving at its decision is a proper one. The Board had complete control over the manner and the means by which the job of substitute teaching was achieved. All of the other facts present warranted the interpretation given to the statute by the agency and it is consistent with the purpose of sec. 111.70, Stats.

The petitioner also challenges the appropriateness of the bargaining unit. There is a very rational basis for the decision made. The substitute teachers, as shown by the evidence, constitute a clearly identifiable and separate group. Their conditions of employment differ from those of the regular teachers. Substitute teachers do not have the fringe benefits accorded the regular personnel, such as insurance, pension rights, pay increments and a variety of leaves of absence, among others. These facts certainly point up the propriety of allowing a separate bargaining unit. It would further appear that the determination of eligibility was a reasonable one under all of the circumstances and founded upon a rational basis.

The decisions of the Commission herein are not contrary to law and are fully consistent with the objectives and purpose of the statute involved, and the orders are affirmed. Counsel may prepare an appropriate judgment for the court's signature.

Dated: June 22, 1970.

BY THE COURT:

/s/ William C. Sachtjen

William C. Sachtjen, Judge
Circuit Court, Branch 4

cc Attys. Kinnel
Wilker
Perry