

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE BOARD OF SCHOOL DIRECTORS

Case XX
No. 12490
ME-418
Decision No. 9000

Mr. John F. Kitzke, Chief Negotiator, and Mr. Theodore J. Kuemmerlein, Assistant Superintendent of Division of Pupil Personnel, appearing on behalf of Milwaukee Board of School Directors.

District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70 of the Wisconsin Statutes, among certain employees of the Milwaukee Board of School Directors, Milwaukee, Wisconsin; and a hearing on such petition having been conducted at Milwaukee, Wisconsin, on January 31, 1969, before Robert B. Moberly, Examiner; and the Commission having considered the evidence and arguments of Counsel and being satisfied that a question has arisen concerning representation for certain employees of the Milwaukee Board of School Directors;

NOW, THEREFORE, it is

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all Social Work Aides employed by the Milwaukee Board of School Directors, excluding supervisors, who were employed by the Municipal Employer on April 21, 1969, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a

No. 9000

majority of such employes desire to be represented by District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, for the purposes of conferences and negotiations with the Milwaukee Board of School Directors on questions of wages, hours and conditions of employment.

Given under our hands and seal
at the City of Madison, Wisconsin,
this 21st day of April, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

William R. Wilberg
William R. Wilberg, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
DISTRICT COUNCIL 48, AMERICAN FEDERATION : Case XX
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, : No. 12490
AFL-CIO : ME-418
Involving Certain Employes of : Decision No. 9000
MILWAUKEE BOARD OF SCHOOL DIRECTORS :
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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Petitioner requested that the Commission direct an election in a collective bargaining unit consisting of "All Social Work Aides employed by the Milwaukee Board of School Directors, excluding supervisors". The Municipal Employer stipulated that the bargaining unit was appropriate, but it objected to including as eligibles those Social Work Aides whose salaries are paid from funds provided by the federal government. Of the 48 Social Work Aides employed as of the date of hearing, the salaries of 36 Aides (hereinafter referred to as "ESEA Aides") are paid from funds provided by the federal Elementary Secondary Education Act (ESEA) and monitored by the Wisconsin Department of Public Instruction. Ten of the Social Work Aides (hereinafter referred to as "Head Start Aides") receive their salary from funds provided by the Head Start Program of the federal Office of Economic Opportunity. The remaining two Social Work Aides (hereinafter referred to as "Board-funded Aides") receive their salaries from funds appropriated by the Municipal Employer as a result of a school board program established in 1964. The Municipal Employer agrees that the Board-funded Aides are eligible to vote, but contends that the ESEA Aides and the Head Start Aides, because their salaries are funded through federal and State programs, are "casual employes, not regularly employed." The Petitioner disputes this contention, arguing that the job content is approximately the same for all Social Work Aides and that the source of funding for their salaries is irrelevant in determining eligibility.

The Municipal Employer does not deny that the job duties of Social Work Aides are approximately the same regardless of the source of funding for their salaries. Nor is it disputed that ESEA Aides,

Head Start Aides and Board-funded Aides all are subject generally to the same hours, wages and working conditions.

Social Work Aides are persons hired primarily for the purpose of assisting professional School Social Workers. The individuals employed are generally non-professional lay people who live in the immediate neighborhood of the school. Many of the functions performed by them do not require the professional competence of a trained social worker, e.g., making home contacts in the community on such matters as student absences and school or community events. An important function of the position is to develop a good relationship between the home and the school, and to act as a liaison between the professional person and the home.

Social Work Aides generally work six hours per day, five days per week, at a rate of \$2.15 per hour. The maximum number of hours permitted is 30 hours rather than the normal 40 hours so that more persons may be given employment.

The Municipal Employer has authority to hire Social Work Aides and authority to fire and discipline them. The Social Work Aide receives work assignments from the Municipal Employer, and is subject to its direction and supervision. Such aides are not subject to Civil Service, as are certain other personnel employed by the Municipal Employer. Social Work Aides are not eligible to take part in the Municipal Employer's pension program and are not covered by Social Security. They receive no paid holidays and, like teachers, receive no vacation benefits. However, the Municipal Employer provides them with the benefits of health insurance, sick leave and life insurance, and also withholds income tax from their wages.

If the only question before us were whether, on the basis of their working conditions, Social Work Aides are casual employes or persons "regularly employed", there would be no doubt as to the result. Clearly, in view of the number of hours worked, the regularity of the five-day week, and the other conditions of employment described above, the Social Work Aides involved here have "a sufficient interest in their wages, hours and working conditions so as to entitle them to vote in the representation election."^{1/} However, the Municipal Employer

^{1/} Milwaukee Board of School Directors (8901) 2/69

also states that because the programs involving ESEA Aides and Head Start Aides must be funded or approved by the federal and State governments on an annual basis, "there is no assurance that these programs will continue from year to year." Therefore, it contends, ESEA Aides and Head Start Aides must be denominated casual employees "since they have no certainty as to whether they will or will not return to work."

It is true that the funds required to continue the employment of ESEA Aides and Head Start Aides might not necessarily be appropriated or allocated for this purpose in future years by the federal or State governmental units now involved. However, it should be noted that this is also true with regard to the funds required to continue the employment of the Board-funded Aides, which the Municipal Employer admits are eligible to vote. Funds to retain Board-funded Aides must be freshly appropriated by the Municipal Employer in its budget for each calendar year, and there is no assurance that the Municipal Employer will retain such employees in future years. In fact, most programs in public employment, whether federal, state or municipal, are financed through the adoption of budgets on a year-to-year basis, or, in the case of the State, on a biennial basis. If we were to deny eligibility to employees who are paid from funds provided only on a year-to-year basis, our laws governing labor relations in the public sector would be rendered almost meaningless because only few employees, if any, would be entitled to the laws' benefits. We do not believe the legislature intended to so restrict employee rights, and the mere fact that an individual is paid from funds which must be re-appropriated in future years will not preclude him from exercising the statutory rights of an employee.

Just as we will not deny eligibility to a municipal employee for the reason that he receives his salary from funds provided on a year-to-year basis, we will not deny eligibility to a municipal employee solely for the reason that he is paid from funds provided through programs funded by the federal or State government. Such a factor should not act to prevent a person from exercising employee rights when other considerations suggest that the person is "regularly

employed". If, as here, the employe works a sufficient number of hours, is paid and supervised by the municipal employer, and in other respects has a sufficient measure of interest in his conditions of employment, he shall be deemed to be regularly employed and his eligibility will not be denied because the source of funding for his salary is another governmental unit.^{2/}

Dated at Madison, Wisconsin this 21st day of April, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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^{2/} Accord, Superior Vocational School System, Dec. No. 7479, 2/66, where the Commission affirmed the eligibility of certain teachers whose salaries were paid from funds provided by the federal Man Power Development and Training Act.