

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of

DRIVERS, SALESMEN, WAREHOUSEMEN, MILK PROCESSORS, CANNERY, DAIRY EMPLOYEES AND HELPERS UNION LOCAL NO. 695, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

JOINT SCHOOL DISTRICT NO. 3 OF THE CITY OF OCONOMOWOC, ET AL

Involving Certain Employees of

JOINT SCHOOL DISTRICT NO. 3 OF THE CITY OF OCONOMOWOC, ET AL

Case I  
No. 14452 ME-625  
Decision No. 10388

Case II  
No. 14550 ME-641  
Decision No. 10388-A

Case III  
No. 14551 ME-642  
Decision No. 10388-B

Case IV  
No. 14552 ME-643  
Decision No. 10388-C

Case V  
No. 14553 ME-644  
Decision No. 10388-D

Case VI  
No. 14554 ME-645  
Decision No. 10388-E

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. David Loeffler, and Mr. James Marketti, Business Representative, for the Union.

Murphy, Huiskamp, Stolper, Brewster & Desmond, Attorneys at Law, by Mr. F. Anthony Brewster and Mr. William F. Mundt for the Employer.

DIRECTION OF ELECTIONS  
AND ORDER DISMISSING PETITIONS

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Joint School District No. 3 of the City of Oconomowoc, et al, having filed separate petitions with the Wisconsin Employment Relations Commission requesting the Commission to conduct separate elections, pursuant to Section 111.70 of the Wisconsin Statutes, among certain employes of Joint School District No. 3 of the City of Oconomowoc, et al, Oconomowoc, Wisconsin; and a hearing on said petitions having been conducted on April 2, 1971, at Oconomowoc, Wisconsin, Douglas V. Knudson, Hearing Officer, being present; and the Commission having considered the petitions, evidence and arguments of Counsel, and being fully advised in the premises, and being satisfied that in Case I questions have arisen concerning the appropriate collective bargaining unit as well as representation for certain non-professional and non-craft employes in the employ of said School District, and further that questions of representation have arisen in Cases IV, V and VI among certain craft employes in the employ of said School District; and being satisfied that the petitions filed in Case II and III be dismissed since the units sought therein cannot constitute appropriate units within the meaning of Section 111.70(4)(d), Wisconsin Statutes;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission in the voting group consisting of all regular full-time and regular part-time employes employed by Joint School District No. 3 of the City of Oconomowoc, et al, in its custodial and maintenance services, excluding casual employes, craft employes, supervisors and all other employes, who were employed by the School District on June 28, 1971, except such employes as may prior to the elections quit their employment or be discharged for cause, for the purposes of determining:

- (a) whether a majority of such employes eligible desire to constitute themselves a separate collective bargaining unit; and
- (b) provided that the vote on the above question establishes a separate bargaining unit, whether a majority of such employes voting desire to be represented by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, for the purposes of collective bargaining with Joint School District No. 3 of the City of Oconomowoc, et al, on questions of wages, hours and conditions of employment. 1/

IT IS FURTHER DIRECTED that separate elections be conducted among the following separate craft units:

- (a) All craft electricians in the employ of Joint School District No. 3 of the City of Oconomowoc, et al, excluding all other employes;
- (b) All craft carpenters in the employ of Joint School District No. 3 of the City of Oconomowoc, et al, excluding all other employes; and
- (c) All craft painters in the employ of Joint School District No. 3 of the City of Oconomowoc, et al, excluding all other employes,

who were employed on June 28, 1971, except such employes as may prior to the elections quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting in each of said separate units desire to be represented by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, for the purposes of collective bargaining with Joint School District No. 3 of the City of Oconomowoc, et al, on questions of wages, hours and conditions of employment.

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1/ If the unit determination balloting does not result in the establishment of a separate unit in said voting group, the ballots cast by the employes therein with respect to their choice of representation will be impounded.

IT IS ORDERED that the petitions filed by Joint School District No. 3 of the City of Oconomowoc, et al, in Cases II and III be, and the same hereby are, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Jos. B. Kerkman*  
Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

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with INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF  
AMERICA

and

JOINT SCHOOL DISTRICT NO. 3 OF THE CITY OF  
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MEMORANDUM ACCOMPANYING  
DIRECTION OF ELECTIONS  
AND ORDER DISMISSING PETITIONS

On February 23, 1971, the Union filed a petition with the Wisconsin Employment Relations Commission requesting that an election, pursuant to Section 111.70, Wisconsin Statutes, be conducted among all regular custodial and maintenance employes of the School District, excluding office clerical, professional, food service employes and supervisors. After proper notice, hearing on the petition was conducted on April 2, 1971. At the outset of the hearing the Union moved to amend the petition to describe the unit claimed as being appropriate to include all regular full-time and regular part-time custodial employes as defined in the Act, excluding office clerical, professional, food service employes and supervisors. Such amendment was evidenced by the introduction of an amended petition. In addition, during the outset of the hearing, the Union filed with the Hearing Officer separate petitions wherein they requested separate representation elections among all craft electricians, 2/ all craft carpenters, 3/ and all craft painters. 4/ Counsel for the School District moved that the original petition filed by the Union in Case I be dismissed since the Union did not indicate on a petition form whether the claimed unit does or does not include craft employes. While the amended petition filed in Case I on the date of

2/ Case IV

3/ Case V

4/ Case VI

the hearing indicated that the claimed unit did not include any craft employes, had not the petition been amended, we do not consider the failure of the Union to indicate on its original petition whether the proposed unit did or did not include craft employes to be such a material defect as to warrant the dismissal of the petition.

During the hearing the School District requested the Commission to consider whether the amendment of the original petition in Case I, which was made at the outset of the hearing, was timely. The nature of the amended petition was not substantial and therefore, does not constitute a basis for dismissing the amended petition. Further, during the course of the hearing the School District filed with the Hearing Officer two petitions, the first requesting an election among all regular full-time maintenance employes, excluding supervisors and all other employes, 5/ and the second, requesting an election among all regular full-time custodians, matrons and laundry personnel, excluding supervisors and all other employes. 6/ Such petitions in effect attempted to amend the petition originally filed by the Union. The Commission is satisfied that neither party suffered any substantial surprise or inconvenience in either the amendment of the original petition or the filing of the subsequent petitions by both parties.

At the hearing both parties orally agreed to an exchange of briefs to be filed within a ten-day period following the receipt of the transcript. The School District timely filed its brief with the Commission on May 3, 1971. The Union filed its brief, in the form of a letter, on May 17, 1971, more than two weeks after the designated time for filing the briefs. The briefs were filed with the Hearing Officer, and on May 19, 1971, the Hearing Officer exchanged the briefs with Counsel for the parties. No provision was made for supplemental briefs, however, the Union's Counsel filed a supplemental brief in the form of a letter following the receipt of the brief of Counsel for the School District "to clarify the Union's position with respect to the unit . . ." Counsel for the Union sent a copy of its supplemental brief to Counsel for the Employer on the same date on which the supplemental brief was sent to the Commission. Thereafter, Counsel for the School District filed a motion to strike the Union's briefs. The Commission normally expects Counsel for parties to file briefs in accordance with the understanding reached at the hearing, and that if any extension of time is required by either of the parties for the filing of their briefs, a request in that regard should be made to the Commission prior to the dates on which the briefs are due. Since the issues which arose during the course of this hearing are not novel but have been determined in previous decisions, we are denying the School District's motion to strike the briefs filed by the Union in this proceeding.

The record discloses that the custodial and maintenance services of the School District are under the direct supervision of the Supervisor of Buildings and Grounds. The Department of Buildings and Grounds consists of employes performing custodial and maintenance services at the various buildings operated by the School District. The School District has designated among its "full time maintenance staff" the positions of painter, truck driver, inside-outside man, carpenter, and electrician. Also included in the organization chart of the maintenance staff are five part-time lawn crew employes and ten part-time teacher-painters. Its "full-time operational staff" consists of

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5/ Case II

6/ Case III

the classifications of six head custodians, two night foremen, four day custodians, one head night custodian, 12 night custodians, two laundry men, one 12-month matron and one 10-month matron. Also included in the operational staff are regular part-time and casual matrons and regular part-time and casual custodians.

In Cases IV, V and VI the Union requests separate elections among separate crafts of electricians, carpenters and painters. The Employer would include said craft positions as well as the truck driver and inside-outside man in one voting group since they are employed in a separate and distinct department, namely "Maintenance."

Section 111.70(4)(d), Wisconsin Statutes, in part, provides that:

"Proceedings in representation cases shall be in accordance with ss. 111.02 (6) and 111.05 insofar as applicable, except that where the commission finds that a proposed unit includes a craft the commission shall exclude such craft from the unit. The commission shall not order an election among employes in a craft unit except on separate petition initiating representation proceedings in such craft unit."

The fact that separate craft employes are employed in one department does not override the clear intent of the statute to the effect that craft employes can only be included in units consisting of employes in the same craft. 7/ Therefore, the craft electrician, craft carpenter and craft painter constitute three separate units, and the Commission has directed representation elections in each of said units. The remaining active non-craft "maintenance employes" consist of one outside man, one truck driver and five employes employed as a lawn crew on a part-time basis. 8/

The School District argues that the maintenance employes have working conditions, duties and functions, working locations and supervision which differ from those of the custodial employes, and, therefore, the two groups do constitute separate departments. The Business Manager and his subordinate, the Superintendent of Buildings and Grounds, are the primary supervisors of the custodial and maintenance employes, and while the individual school principals may be consulted during merit evaluations for and may assign certain special duties to custodial employes, the Business Manager and the Superintendent of Buildings and Grounds maintain daily contact with and retain all responsibility for hiring, discharging, promoting, transferring, suspending, laying off or recalling the custodial employes. The record fails to disclose any supervisory responsibility of the Superintendent of Buildings and Grounds for employes other than the maintenance and custodial employes.

The record discloses a meaningful exchange of the inside-outside man and the truck driver into the custodial activities. The inside-outside man spends 25 to 30 percent of his time performing custodial duties while the truck driver works as a custodial employe in the summer on rainy days, and, on other occasions, on a voluntary overtime basis. However, there is nothing in the record which reveals any interchange of the custodial and maintenance employes with other groups of employes. 9/

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7/ City of Milwaukee (7432) 1/66; Milwaukee County (7467-A) 4/66.

8/ The School District no longer employs part-time teacher-painters.

9/ The School District employs other non-professional and non-craft employes such as clerical and food service employes not under the supervision of the Department of Building and Grounds.

The Commission is satisfied that the operational and maintenance staff employes are employed in a separate department within the meaning of Section 111.02(6) of the Wisconsin Statutes, and except for the craft employes, are entitled to a unit determination vote. The petitions filed by the School District in Cases II and III seeks separate units in voting groups which do not constitute separate divisions or departments, and therefore, such petitions have been dismissed.

The School District contends that all part-time employes should be excluded from the eligibles, claiming that they have no significant community of interest with the regular full-time employes. The Commission has never adopted a policy requiring part-time employes to work a specified number of hours in order to be included among those eligible to participate in an election. If employes are regularly employed, regardless of the number of hours worked by them, they have a definite interest in the wages, hours and working conditions governing their employment and therefore are included in the voting group, and, therefore, are eligible to vote in the elections. 10/

As of March 31, 1971, the School District employed 15 employes characterized as "irregular part-time staff." Such staff included Evelyn Gauerke as an on-call matron, Keith Gerdman, Bruce Knox, Richard Leschensky, Robert Leschensky, Brian Manske, Scott Palmer, Michael J. Riegor and Patric Winter, all student helpers. Evelyn Gauerke, Keith Gerdman, Bruce Knox and Michael J. Riegor have no steady employment but are on call. They are casual employes, and are, therefore, excluded from the voting group involving employes in custodial and maintenance services. 11/

Richard Leschensky, Robert Leschensky, Brian Manske, Scott Palmer and Patric Winter have been employed as a lawn crew by the School District during the summer months. Robert Leschensky has been employed for the past four summers, Richard Leschensky and Brian Manske have been employed for the last three summers, Patric Winter has been employed in such capacity for the last two summers and Scott Palmer has been so employed for the last summer. The history of such employment indicates that the latter employes in the lawn crew have an expectancy of return to their seasonal employment the following season and, therefore, have an interest in the wages, hours and working conditions of which they are employed. We, therefore, conclude that such seasonal lawn crew employes are included in the voting group of custodial and maintenance employes, 12/ and are eligible to participate in the elections. 13/

Also included in the "irregular part-time staff" was William Hein, Walden Petersen, Donald Rollefson, Ralph Smithyman and Jack Rossman, Jr. as custodians on call. Since said employes are "on call" they are casual employes and are not included in the voting group. In addition, John O. Zinn was also included on the "irregular part-time staff" as a temporary custodian in the Senior High School.

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10/ Eau Claire County (7649) 7/66; Prigge's Chartered Buses, Inc. (8061) 6/67.

11/ Village of Brown Deer (8915) 2/69.

12/ Stevens Point Board of Education (7713) 8/66.

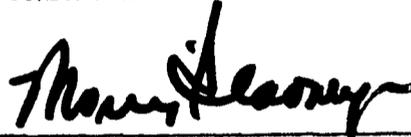
13/ During the course of the hearing the parties stipulated that the individuals occupying the positions of head custodian and night custodian foreman were not supervisory employes.

Zinn was hired on February 19, 1971, as a temporary replacement for a full-time custodian who is on a sick leave of absence for an indefinite duration, which may continue for several months, and there is a strong possibility that Zinn's employment will become permanent. Under such circumstances, we conclude that Zinn is eligible to vote in the elections.

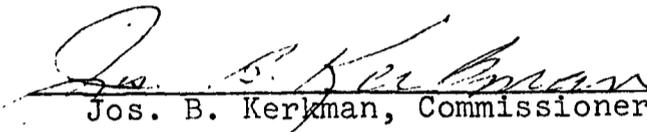
Dated at Madison, Wisconsin, this 28th day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Jos. B. Kerkman, Commissioner