

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 employees employed by Joint School District No. 3 of the City of Oconomowoc, et al, in its custodial and maintenance services, excluding casual employees, craft employees, supervisors and all other employees, who were employed by the School District on June 28, 1971, except such employees 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 employees 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 employees 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 employees;
- (b) All craft carpenters in the employ of Joint School District No. 3 of the City of Oconomowoc, et al, excluding all other employees; and
- (c) All craft painters in the employ of Joint School District No. 3 of the City of Oconomowoc, et al, excluding all other employees,

who were employed on June 28, 1971, except such employees as may prior to the elections quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees 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.

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 employees 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

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

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 employees of the School District, excluding office clerical, professional, food service employees 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 employees as defined in the Act, excluding office clerical, professional, food service employees 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 employees. While the amended petition filed in Case I on the date of

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

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 employees in a craft unit except on separate petition initiating representation proceedings in such craft unit."

The fact that separate craft employees are employed in one department does not override the clear intent of the statute to the effect that craft employees can only be included in units consisting of employees 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 employees" consist of one outside man, one truck driver and five employees employed as a lawn crew on a part-time basis. 8/

The School District argues that the maintenance employees have working conditions, duties and functions, working locations and supervision which differ from those of the custodial employees, 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 employees, and while the individual school principals may be consulted during merit evaluations for and may assign certain special duties to custodial employees, 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 employees. The record fails to disclose any supervisory responsibility of the Superintendent of Buildings and Grounds for employees other than the maintenance and custodial employees.

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 employee 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 employees with other groups of employees. 9/

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 employees such as clerical and food service employees not under the supervision of the Department of Building and Grounds.

The Commission is satisfied that the operational and maintenance staff employees are employed in a separate department within the meaning of Section 111.02(6) of the Wisconsin Statutes, and except for the craft employees, 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 employees should be excluded from the eligibles, claiming that they have no significant community of interest with the regular full-time employees. The Commission has never adopted a policy requiring part-time employees to work a specified number of hours in order to be included among those eligible to participate in an election. If employees 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 employees 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 employees, and are, therefore, excluded from the voting group involving employees 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 employees 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 employees are included in the voting group of custodial and maintenance employees, 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 employees are "on call" they are casual employees 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.

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.

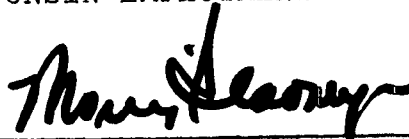
13/ During the course of the hearing the parties stipulated that the individuals occupying the positions of head custodian and night custodian foreman were not supervisory employees.

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.

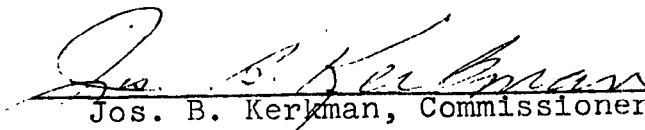
Dated at Madison, Wisconsin, this 28th day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Jos. B. Kerkman, Commissioner