

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
LOCAL 97-A, AFSCME, AFL-CIO	:	
Involving Certain Employees of	:	Case IV
BOARD OF VOCATIONAL, TECHNICAL AND	:	No. 14905 DR(M)-24
ADULT EDUCATION, DISTRICT NO. 8	:	Decision No. 10489-A
(WAUKESHA COUNTY)	:	
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Appearances:

Mr. Robert W. Lyons, District Representative, Wisconsin Council of County and Municipal Employees, for the Petitioner.  
Quarles, Herriott, Clemons, Teschner and Noelke, Attorneys at Law, by Mr. James Urdan, for the Municipal Employer.

DECLARATORY RULING

Local 97-A, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission issue a Declaratory Ruling to determine whether the position of Instructional Laboratory Technician is properly included in an existing certified bargaining unit consisting of non-professional employes in the employ of Board of Vocational, Technical and Adult Education, District No. 8 (Waukesha County), and whether certain clerical positions perform such confidential duties as to exclude them from said unit; and hearing on such petition having been conducted on September 21, 1971, Robert M. McCormick, Hearing Officer being present; and the parties having filed briefs in the matter; and the Commission having considered the evidence and arguments, and being full advised in the premises, makes and files the following Findings of Fact and Declaratory Ruling.

FINDINGS OF FACT

1. That Local 97-A, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, is a labor organization representing employes for the purposes of collective bargaining.
2. That Board of Vocational, Technical and Adult Education, District No. 8 (Waukesha County), hereinafter referred to as the Municipal Employer, is a vocational school district which operates and maintains a school system in the Waukesha County area.
3. That following an election conducted by it, the Wisconsin Employment Relations Commission, on October 13, 1970 issued a Certification of Representatives, wherein it certified that the Petitioner had been selected by a majority of all regular full-time and regular part-time employes, working 10 hours or more per week, employed by the Municipal Employer, excluding supervisors and confidential employes, as the collective bargaining representative for the employes in such unit; that the appropriate bargaining unit, and the employes eligible

to vote therein, was agreed to by the parties during the hearing on the petition initiating said election proceeding; while the unit does not specifically state so, certified teaching personnel were not included in the unit.

4. That the eligibility utilized for the purposes of said election contained the following classifications agreed upon as being included in the unit: Clerk Typist I and II, Stenographer I, II and III, Account Clerk I, Assistant Registrar, Key Punch Operator, Evening Office, Custodians and Janitress; that the individual occupying the position of Bookstore Manager would be permitted to vote by challenged ballot in as much as there was an issue as to whether the individual occupying that position should be included in the unit; that at the time of said election the Municipal Employer employed individuals occupying the positions of Library Assistants; and that neither said classification nor the individuals occupying same were included in the eligibility list agreed upon by the parties.

5. That several months after the issuance of the Certification, the parties, in their collective bargaining agreement effective January 1, 1971 through December 31, 1971, changed the description of the certified bargaining unit to read as follows:

"Article I Recognition

1.01 . . . all regular full-time and regular part-time office and custodial employes. . . but excluding supervisory and confidential employes as defined in the Act. . .

ARTICLE VI

DEFINITION OF EMPLOYEE

6.02 a regular part-time employee is hereby defined as one who regularly works ten (10) or more, but less than thirty (30) hours per week for twenty-six (26) weeks or more per year.";

6. That attached to the aforementioned collective bargaining agreement was an appendix setting forth the classification and the pay rate for the following classifications covered by said collective bargaining agreement:

Clerical Employees

Account Clerk I and II	Key Punch Operator I and II
Assistant to Registrar	Secretary I and II
Bookkeeper I and II	Stenographer I and II
Clerk Typist I, II and III	Switchboard Operator

Maintenance and Custodial Employees

Custodian, Janitor-Janitress, and Maintenance Man

7. That in the spring and early summer of 1971, the Municipal Employer created a series of para-professional positions, ultimately

the general duties of the Laboratory Assistant consists of assisting teachers in maintaining a record system, including the performance of clerical duties incident thereto, familiarizing students with the operation of selected laboratory equipment and performance of routine maintenance of such equipment, and assisting in preparation of basic instructional materials; that the duties performed by Laboratory Assistants are primarily supportive of the education program, including clerical functions which are routine in nature; that the Petitioner contends that the individuals occupying the classification of Laboratory Assistants are properly included within the aforementioned certified unit; and that, however, the Municipal Employer contends that the individuals occupying such classification constitute a distinct department and/or division and should be given an opportunity to determine for themselves whether they desire to constitute a unit separate and apart from the existing certified non-professional employe unit.

8. That the Municipal Employer contends that the classifications of Secretary to the Assistant Director of Instructional Services, the Secretary to the Assistant Director of Student Services, and the Secretary to the Administrator of Center Operations should be excluded from the certified unit on the claim that they are confidential employes; and that, however, the Petitioner contends that said individuals are not performing such duties which would exclude them from the unit as confidential employes.

Upon the basis of the above and foregoing Findings of Fact, the Commission issues the following

DECLARATORY RULING

1. That the Laboratory Assistants, and any other para-professional personnel supportive of the educational program, in the employ of the Board of Vocational, Technical and Adult Education, District No. 8 (Waukesha County) do not occupy positions included in the Certification of Representatives issued by the Wisconsin Employment Relations Commission on October 13, 1970, or in the more specified description of said bargaining unit contained in the recognition clause set forth in the collective bargaining agreement existing between said Municipal Employer and Local 97-A, AFSCME, AFL-CIO; and that, therefore, the Laboratory Assistants, and any other para-professional personnel supportive of the educational program, are not included in said collective bargaining unit.

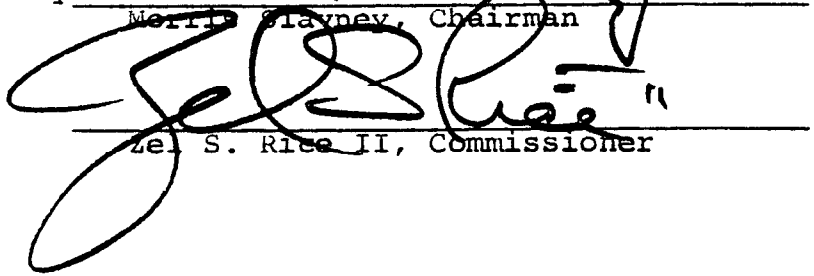
2. That individuals serving as Secretaries to Assistant Directors perform such confidential duties so as to exclude them from the bargaining unit involved.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of November, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Merrill Grayney, Chairman

  
S. Rice II, Commissioner

BOARD OF VOCATIONAL, TECHNICAL AND ADULT EDUCATION  
DISTRICT NO. 8 (WAUKESHA COUNTY), Case IV  
Decision No. 10489-A

MEMORANDUM ACCOMPANYING DECLARATORY RULING

Following an election conducted by it on October 2, 1970, the Commission on October 13, 1970 certified the Petitioner, as the exclusive bargaining representative of "all regular full-time and regular part-time employees. . .working 10 hours or more per week. . .excluding supervisory and confidential employees." At the representation hearing neither the parties, nor the Commission, specifically set forth that teachers (professionals) were to be excluded from the unit, though the Petitioner's petition, leading to hearing in August of 1970, indicated that the claimed-unit did not include "craft employes" (professionals).

The parties subsequently changed the unit description by contract, in essence substituting the phrase "all regular full-time and regular part-time office and custodial employes" for the language which appeared in the aforesaid Certification, supra. (emphasis supplied)

The Petitioner contends that the Municipal Employer presently has two secretarial positions designated confidentials, and that considering the size of the office-clerical staff and the impropriety of diluting a clerk's functions in labor relations matters by distributing same among several clerks, that an additional three (3) clerical positions should not be adjudged to be confidential.

With regard to Laboratory Assistants, the Petitioner contends that the unit description in the Commission's Certification applied to all non-professionals; and that the contractually described bargaining unit, which subsequently altered the description contained in the Certification, was effectuated at the instance of the Municipal Employer. At the time of said change, the reference to, "all. . . office and custodial employes", was merely to make clear that only non-professionals were covered by the unit description, and said change was not intended, argues the Petitioner, to limit the breadth of the unit to the then existing office and custodial positions. The subsequent creation of the positions, Laboratory Assistant, Educational Para-professional or Instructional Laboratory Technician by the Employer, does not operate to dilute the universality of the unit-coverage explicit in both the original WERC Certification and in the recognition clause of the contract, as it applied to all non-professionals.

The Municipal Employer contends that the secretaries to the three assistant administrators in question are privy to personnel and labor relations matters and have access to their respective superior's decisions in these areas. The Employer argues that the mere fact that some of the duties of the three (3) clericals may involve personnel matters affecting non-AFSCME-unit employes does not remove them from the case-law definition of "confidential employes", and therefore the occupants of said clerical positions should be adjudged confidential and excluded from the coverage of the contract.

The Municipal Employer contends that the position of Laboratory Assistant, though not a professional position in the teaching-unit, relates more directly to the educational program than to the maintenance and custodial positions. Said positions were still in a state of evaluation at the time of the hearing herein, and with future expansion of the physical facilities of the District, greater numbers and broader functions will characterize the positions of Laboratory Assistant. The Municipal Employer contends that there is no classification set forth

in the collective bargaining agreement which can possibly cover said positions, and that no occupant of said position voted in the original election. The Municipal Employer argues that if the opportunity for representation should possibly be afforded the occupants of said positions, it should be on the basis of a separate unit vote in the future for Laboratory Assistants, since said group should be designated a separate department or division.

DISCUSSION:

As indicated in the Findings of Fact, at the time of the election, following which the Petitioner was certified as the collective bargaining representative, there existed certain non-professional employees in the employ of the Municipal Employer, namely, individuals occupying the classification of Library Assistant. Neither such classification, nor the individuals involved, were included in the agreed upon eligibility list utilized in the conduct of said election. Further, as noted in the Findings of Fact, the classifications and the individuals occupying same which the parties agreed upon at the hearing on the petition, which initiated the election proceeding, consisted of "pure" clerical and custodial positions, with the exception that the individual occupying the classification of Bookstore Manager could vote by challenged ballot.

It is noted with interest that the unit described in the Direction and Certification did not refer to office-clerical and custodial employees but rather to "all regular full-time and regular part-time employees working 10 hours or more per week". It was obvious that the parties did not intend the unit to include professional employees since professional employees, under the statute which existed at that time, could not be included in a unit of non-professionals. The recognition clause in the collective bargaining agreement which was executed by the parties reflects the intent of the parties to limit the unit to the office and clerical employees and to the custodial employees.

The record discloses that some four months after the Commission's Certification in October of 1970, the Municipal Employer created the position, Educational-Para-professional, the major duties for which were covered in a position description as follows:

1. Assist in maintaining a record system.
2. Assist in overseeing and operating selected laboratory equipment.
3. Assist in preparation and maintenance of basic instructional materials.

The position was on occasion referred to as an Aide. The Municipal Employer established the position initially for the Home Economics Department only, transferring a non-unit employe (part-time teacher) to fill same, the new incumbent thereafter performing some clerical duties such as, "assisting in maintaining files for part-time teachers". The Municipal Employer extended the utilization of an Educational Para-professional to the Development Learning Laboratory. In the late Spring of 1971, the Municipal Employer drafted job descriptions for Instructional Laboratory Technician and subsequently a description for the position of Laboratory Assistant, the former nomenclature representing an identification of a particular job in the Office Occupations Department of the School's Business Administration Division. By use of

the latter title, the Municipal Employer ultimately determined that it would establish system-wide positions which would require that the incumbents function as supportive personnel to teachers in a particular area, performing minor maintenance and check of laboratory equipment, and minor clerical duties involving students' papers and record keeping of student's progress records. The Laboratory Assistants reported to their respective Department Heads, but worked more closely with a particular teacher in a given area.

Since the date of the hearing the Municipal Employment Relations Act has been enacted, and said Act made substantive changes with respect to the establishment of bargaining units in municipal employment. Prior to the effective date of MERA, November 11, 1971, the appropriate bargaining unit consisted of all non-professional and non-craft employes of the municipal employer except where employes engaged in a separate department, division or plant desired to constitute themselves a separate unit, said employes would be afforded the opportunity to determine their desires with respect thereto in an election conducted by the Commission. Professional and craft employes could only constitute a unit consisting of the same profession or craft.

Under MERA the Commission is given the power to determine the appropriate bargaining unit, however, whenever possible it is to avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total work force, and in making such a determination the Commission may decide whether employes in the same or several departments, divisions, institutions, crafts, professions or other occupational grouping may constitute an appropriate unit. 1/ Because the major duties of the Laboratory Assistants are supportive of duties performed by the certificated teachers, the individuals occupying said positions have an insufficient community of interest with either the office clerical employes or the custodial employes, and therefore we have determined that they should not accrete to the established unit. 2/

The record discloses that Violet Burrie and Winifred Richards are secretaries to two Assistant Directors and that their superiors require them to take dictation and transcribe material involving matters connected with labor relations and negotiations between the District, the Teachers Association, and Guidance Counselors units and with the Petitioner. Both individuals also are privy to correspondence and reports involving teacher evaluation, and grievance handling for teachers and custodials in the Petitioner's unit. The record further discloses that Judith Suleski, Secretary to the Administrator of Center Operations, though having no responsibilities relating to her superior's connection with labor relations matters affecting certified units, does in fact handle evaluation reports, salary information and personnel matters covering a substantial number of part-time teachers and part-time clerks not included in any bargaining unit.

The Commission is satisfied that the three secretaries operate as confidentials, privy to personnel and labor relations matters, and

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1/ Section 111.70(4)(d)2.a.

2/ Vocational, Technical and Adult Ed., District 9, (10882), 3/72.

therefore should be excluded from the bargaining unit, regardless of the fact that a substantial portion of their time spent on such duties may involve personnel matters of employes outside Petitioner's bargaining unit. 3/

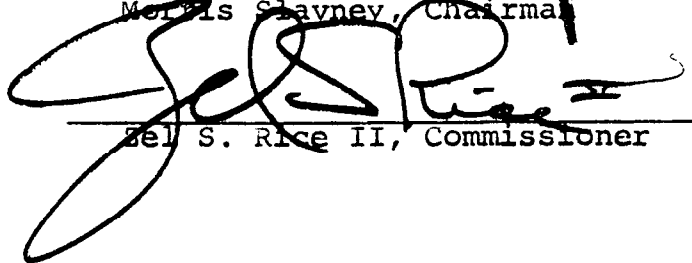
Dated at Madison, Wisconsin, this 27th day of November, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slayney, Chairman



Sel S. Rice II, Commissioner

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3/ Chippewa County, (8727), 10/68; City of Green Bay, (8390), 2/68.