

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
 LOCAL 212, WISCONSIN FEDERATION :
 OF TEACHERS, AFL-CIO :
 For a Declaratory Ruling Involving :
 Certain Employes of :
 DISTRICT 9 AREA BOARD OF VOCATIONAL, :
 TECHNICAL AND ADULT EDUCATION :

Case XVIII
 No. 14907 DR(M)-25
 Decision No. 10518-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Union.
 Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law, by Mr. James A. Urdan, for the Municipal Employer.

FINDINGS OF FACT AND DECLARATORY RULINGS

Local 212, Wisconsin Federation of Teachers, AFL-CIO, having filed a petition for declaratory ruling involving certain teaching personnel in the employ of District 9 Area Board of Vocational, Technical and Adult Education, Milwaukee, Wisconsin; and hearing in the matter having been conducted at Milwaukee, Wisconsin, on November 23, 1971, Commissioner Zel S. Rice II being present; and during the course of the hearing evidence and arguments having been presented by the parties with respect to two issues, namely, (1) "What teaching duties are to be considered in determining whether a teacher is to be included in the existing certified collective bargaining unit?", and (2) "Whether wages, hours or working conditions performed by bargaining unit personnel in the Municipal Employer's evening school classes are matters subject to collective bargaining between the Union and the Municipal Employer?"; and the Commission, having considered the evidence and arguments of Counsel, being fully advised in the premises makes and files the following Findings of Fact and Declaratory Rulings.

FINDINGS OF FACT

1. That Local 212, Wisconsin Federation of Teachers, AFL-CIO, hereinafter referred to as the Union, is a labor organization and maintains offices at 1913 South 91st Street, West Allis, Wisconsin.
2. That District 9 Area Board of Vocational, Technical and Adult Education, hereinafter referred to as the Municipal Employer, is a municipal employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act; and that the Municipal Employer is engaged in providing educational services, and has its administrative offices at 1015 North Sixth Street, Milwaukee, Wisconsin.
3. That on April 2, 1962, the Union initiated a representation proceeding before the Wisconsin Employment Relations Commission 1/

1/ Then the Wisconsin Employment Relations Board.

by the filing of a petition requesting an election among "all regular full time day school faculty personnel carried on the faculty salary schedule in Classes I, II, III, IV and V in the employ of the Milwaukee Board of Vocational and Adult Education, ^{2/} hereinafter referred to as the Municipal Employer, excluding all special service counselors, associate faculty counselors, faculty counselors, administrative counselors, and all part time day school and all night school employees and all other employees and supervisors as defined in the Act"; that during the course of the hearing on such petition various issues arose, including an issue with respect to the appropriate bargaining unit; that during the course of the hearing on said petition the Union changed its position and indicated it desired a unit which would include teaching personnel, who teach 50 percent of a full teaching schedule.

4. That at that time the Milwaukee Vocational and Adult Schools Education Association, hereinafter referred to as the Association, was also interested in representing teaching personnel in the employ of the Municipal Employer; that the Association took the position that the appropriate unit should include "all regular teaching personnel teaching at least fifty per cent of a full teaching schedule, special service counselors, associate faculty and faculty counselors, administrative counselors, office and clerical employees and part time day school teachers and all night school teachers"; and that the Municipal Employer took no definite position with respect to the appropriate collective bargaining unit.

5. That the record in said matter disclosed, among other facts, the following:

"Employees employed on the regular teaching staff of the Municipal Employer, including part time teachers who teach at least 50% of the regular teaching schedule are paid on the basis of the school year and receive sick leave benefits. They also participate in and are eligible to receive teachers' retirement benefits and they also receive tenure. Tenure is defined as security rights for job purposes. Employees who are engaged in teaching as a principal occupation earn tenure after three years of teaching and after receiving tenure are no longer on probation and have certain rights with respect to their positions. Part time teachers who teach less than 50% of the normal teaching schedule and who predominantly teach at night are treated separately by the Municipal Employer in that they are paid by the semester for each class period taught. Such payment is proportionately less than is received by regular teachers for the same hours of teaching. Said part time teachers do not receive sick leave, do not participate in teachers' retirement benefits, nor are they entitled to tenure, nor do they earn any credits toward tenure, while teaching less than 50% of the normal teaching schedule."

6. That on May 14, 1963, the Commission issued a Direction of Elections wherein it directed as follows:

"That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations

^{2/} The previous name of the Municipal Employer.

Board within thirty (30) days from the date of this Directive among all regular teaching personnel of the Milwaukee Board of Vocational and Adult Education, teaching at least fifty per cent of a full teaching schedule excluding teaching personnel teaching less than fifty per cent of a full teaching schedule, special service counselors, associate faculty counselors, faculty counselors, administrative counselors, office and clerical employes, and all other employes, supervisors and executives who were employed by said Municipal Employer on May 14, 1963, except such employes as may prior to the elections quit their employment or be discharged for cause for the purposes of determining (1) whether or not a majority of such employes desire to constitute themselves a separate collective bargaining unit and (2) whether or not a majority of such employes desire to be represented for the purposes of conferences and negotiations with the Municipal Employer on questions of wages, hours and conditions of employment by Milwaukee Vocational Teachers Union Local 212, American Federation of Teachers, AFL-CIO, or by Milwaukee Vocational and Adult Schools Education Association, affiliated with the Wisconsin Education Association, or by neither of said organizations."

7. That in its Memorandum accompanying said Direction the Commission, in part, stated:

"We are confronted with the problem as to whether or not all employes of the Municipal Employer who are engaged in teaching should be included in a single separate collective bargaining unit. There is no doubt that all of the regular classroom teachers from Classes V through I, who teach classes in the daytime, are engaged in teaching as a principal occupation. Part time teachers who teach at least 50% of the regular teaching schedule, regardless of whether they teach day or night are considered for the purpose of this proceeding as being engaged in teaching as a full time profession. Those employes who teach less than 50% of a full teaching schedule for the Municipal Employer are not so considered. There may be a few employes who teach for another educational facility on a full schedule basis, however, if these employes are teaching less than 50% of the regular teaching schedule for the Municipal Employer they are treated by the Municipal Employer as employes not fully engaged in the profession. The Municipal Employer has recognized that there exists a division between the teachers we have identified as those engaged in the full time profession of teaching and those not so engaged, since teachers who teach less than 50% of a full teaching schedule do not participate in sick leave, teacher retirement benefits, nor tenure, while those who teach 50% or more of the teaching schedule do participate in said benefits. Furthermore, evidence of the division which the Municipal Employer has created between the two groups is the fact that the great majority of the teachers who teach more than 50% of a regular teaching schedule are paid on a yearly basis, every two weeks, while those who teach less are paid on a per diem basis and hired for a single semester.

In response to the Association's contention that the Municipal Employer has historically bargained for all the

teachers and certain other classifications in one group, we conclude that, while the Association and the Union in the past prior to the enactment of Section 111.70 of the Wisconsin Statutes may have submitted proposals with respect to wages, hours and working conditions for the employes of the Municipal Employer covering employes in addition to teachers, it cannot be said that the history of 'collective bargaining' was so permanent that it established a division or department which remains forever inviolate. It appears to the Board that the proposals were submitted in such a manner as to cover the requests of the members of both the Association and the Union regardless of the type of work they performed. The Association made demands for its members, the Union made demands for its members and the Municipal Employer considered, no doubt, the demands of both organizations covering Union members and Association members engaged in identical classifications. The history of employe consideration indicates that the Municipal Employer has considered teachers teaching more than 50% of the regular schedule to be different and separate from those teaching less and that those in the former group have a community of interest which is substantially different from that of the employes in the latter group.

We therefore conclude that there are two separate divisions among the teachers employed by the Municipal Employer, (1) those teaching more than 50% of a regular teaching schedule and (2) those teaching less than that schedule. We therefore have established a voting group consisting of all regular full time day school faculty personnel having the classification of Classroom Teachers V through I and all part time teachers teaching at least 50% of the regular teaching schedule to determine whether or not said employes desire to constitute a bargaining unit separate and apart from the other teaching personnel who teach less than 50% of the regular teaching schedule. If a majority of the eligible employes in said voting group vote to constitute themselves a separate unit they shall be so considered."

8. That on June 3, 1963, the Commission conducted the elections which had been directed on May 14, 1963, the results of which indicated that the teaching personnel in the voting group set forth in the Direction of Elections voted to establish themselves an appropriate collective bargaining unit, and further, that a majority of the eligible employes in said collective bargaining unit selected the Union as their exclusive collective bargaining representative.

9. That since June 17, 1963, and at all times material herein, the Union has been the exclusive bargaining representative of the employes in said collective bargaining unit.

10. That during each period of contract negotiations held between the Union and the Municipal Employer since June 17, 1963, the Union has made proposals affecting the conditions of employment of bargaining unit employes employed as teachers of classes in the Municipal Employer's evening schedule; and that the Municipal Employer has refused to discuss those proposals each time they have been put forward.

11. That the Union contends, since it represents positions requiring teaching at night held by teaching personnel teaching at least 50 percent of a full teaching schedule, that it has the right to negotiate over wages, hours and working conditions of said positions; and that on the contrary, the Municipal Employer contends that the Union has no such authority.

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

DECLARATORY RULINGS

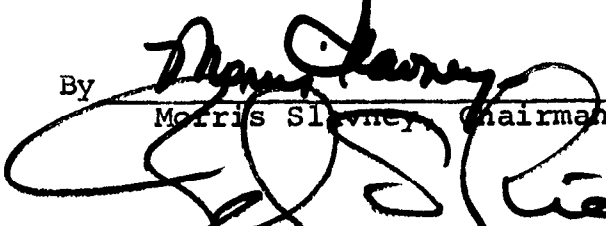
1. That the time spent in both day and evening teaching duties is to be included in determining whether any particular teacher spends at least 50 percent of his or her time of a full teaching schedule.


2. That Local 212, Wisconsin Federation of Teachers, AFL-CIO, has the right to bargain over wages, hours and working conditions affecting teachers who are included in the aforesaid bargaining unit while teaching evening school classes, and that District 9 Area Board of Vocational, Technical and Adult Education has a duty to bargain with Local 212, Wisconsin Federation of Teachers, AFL-CIO, affecting the wages, hours and working conditions of said teachers.

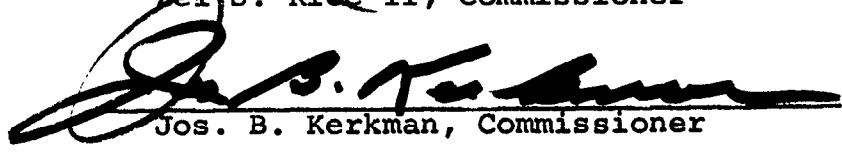
Given under our hands and seal at the City of Madison, Wisconsin, this 14th day of July, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slivney, Chairman


Zel S. Rise II, Commissioner


Jos. B. Kerkman, Commissioner

DISTRICT 9 AREA BOARD OF VOCATIONAL, TECHNICAL AND ADULT EDUCATION,
XVIII, Decision No. 10518-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT AND DECLARATORY RULINGS

The Union initiated the instant proceeding by the filing of a petition requesting the Commission to initiate a fact finding proceeding between the Union and the Municipal Employer. In its petition the Union alleged that the Municipal Employer refused to bargain with respect to wages, hours and working conditions of teachers in the certified collective bargaining unit who were teaching evening classes. Following the receipt of the petition, the Commission, in writing, notified the parties that the issue involved appeared to lend itself more to a petition for a declaratory ruling rather than fact finding. The Commission requested the Union to advise as to its intention in the matter. Thereafter, the Union advised the Commission that it desired that the matter be treated as a petition for a declaratory ruling and the Municipal Employer had no objection to the change in the form of the proceeding. As indicated previously herein, an additional issue was raised during the course of the hearing.

It is difficult for the Commission to understand why an issue has arisen with respect to the right of the Union to bargain wages, hours and working conditions of night school teachers who teach at least 50 percent of a regular teaching schedule. The original unit was established, not on the basis of day versus night school teachers, but rather on whether teachers teaching at least 50 percent of a regular teaching schedule desired to constitute a unit separate and apart from those teachers teaching less than a 50 percent teaching schedule. In the original representation proceeding, in determining whether a teacher taught at least 50 percent of a full teaching schedule, the Commission indicated that the time taught included not only day time teaching but also night classes. The inclusion of night class teaching in determining the appropriate unit would be meaningless if the wages, hours and conditions of employment of night class teachers, who teach at least 50 percent of a full teaching schedule, were not subject to collective bargaining. Had the intent of the Commission been otherwise it would not have included night class teaching in determining whether a teacher taught at least 50 percent of a full teaching schedule.

Since the Union is the exclusive collective bargaining representative for teachers who teach at least 50 percent of a full teaching schedule, it has the right, and the Municipal Employer has the duty, to bargain wages, hours and conditions of employment of the teachers in the bargaining unit regardless whether they teach during the day or evening, and regardless of the consequences such bargaining may have on those teachers who are not in the unit, whether they teach day or night classes.

Dated at Madison, Wisconsin, this 14th day of July, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Shovney, Chairman


W. S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner