

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of
 KENOSHA EDUCATIONAL AIDES ASSOCIATION
 Involving Employes of
 UNIFIED SCHOOL DISTRICT NO. 1 OF THE
 CITY OF KENOSHA AND TOWNS OF PLEASANT
 PRAIRIE AND SOMERS

Case XXV
 No. 15908 ME-825
 Decision No. 11293

Appearances:

Mrs. Kenneth Deerwester, Acting President, Kenosha Educational
 Aides Association, for the Petitioner.
Attorney Paul F. Wokwicz, Attorney, for the Municipal Employer.

DIRECTION OF ELECTION

Kenosha Educational Aides Association having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes among certain employes of the Unified School District No. 1 of the City of Kenosha and Towns of Pleasant Prairie and Somers; and a hearing on such petition having been conducted at Kenosha, Wisconsin, on September 7, 1972 by Marshall L. Gratz, Hearing Officer; and the Commission having considered the evidence and being satisfied that a question has arisen concerning representation for certain employes of the Municipal Employer named above;

NOW, THEREFORE, it is

DIRECTED

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 Direction in the collective bargaining unit consisting of all regular full-time and regular part-time aides employed by the above-named Municipal Employer including but not limited to the following categories: bus aides, noon-hour supervisors, instructional aides, special education aides, speech aides, learning disability aides, resource aides, library aides and social work aides but excluding voluntary (unpaid) aides, professional employes, supervisory and managerial personnel and confidential and temporary employes who were employed by the Municipal Employer on September 15, 1972, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented by Kenosha Educational Aides Association for the purposes of collective bargaining with the above-named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
 City of Madison, Wisconsin, this 19th
 day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
 Morris Slavney, Chairman

Zel J. Rice II
 Zel J. Rice II, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

In its petition for election the Union initially claimed a collective bargaining unit consisting of all regular full-time and part-time aides. At the hearing subsequent to discussions between the parties, the Union amended its petition so as to claim a collective bargaining unit consisting of all regular full-time and regular part-time aides including but not limited to the following categories: bus aides, noon-hour supervisors, instructional aides, special education aides, speech aides, learning disability aides, resource aides, library aides and social work aides but excluding voluntary (unpaid) aides, professional employes, supervisory and managerial personnel and confidential and temporary employes. The Municipal Employer indicated a willingness to stipulate to the foregoing unit description on condition that the words "bus aides" and "noon-hour supervisors" would not appear therein.

ISSUES

There are two issues which must, at this time, be decided by the Commission. First, whether "bus aides" should be expressly included within the bargaining unit and second, whether "noon-hour supervisors" should be so included.^{1/}

FACTS

General Background

The Municipal Employer employs teachers, substitute teachers, building service employes (including custodial, maintenance, warehouse and food service personnel and matrons), carpenters, painters and secretarial-clerical employes in addition to various classifications of "aides" performing school-related functions. With the exception of the "aides" and the substitute teachers, all of the aforementioned groups of employes are currently represented for collective bargaining purposes.

The parties agreed that the following lists accurately describe the work performed by various aides other than the bus aides and noon-hour supervisors.

A. Pre-school and Elementary School aides

Work under the direction of the teacher or principal in performing such duties and functions as:

^{1/} Since the parties agreed upon an eligibility date that is subsequent to the date of hearing, it was not possible for the Municipal Employer to provide an up-to-date proposed eligibility list at the time of the hearing. Consequently it is possible that disputes may arise as to the eligibility of certain individuals in terms of the collective bargaining unit description determined herein. It is the Commission's practice to resolve such disputes in a post-balloting hearing with respect to challenged ballots unless it appears that the number of challenged ballots anticipated is a large percentage of the entire number of proposed eligibles.

1. Check, correct and mark some workbooks, seatwork, papers, and tests for review by classroom teacher.
2. Administer, monitor, score, and graph standardized tests.
3. Prepare room for use of special equipment and for the showing of films and filmstrips.
4. Check out, return, store and maintain supplies.
5. Arrange bulletin boards and exhibits, set up charts, attend to room environment.
6. Supervise seatwork.
7. Supervise student make-up work.
8. Work with small groups of children in independent study and follow-up.
9. Prepare materials as required.
10. Check attendance and maintain student personnel records.
11. File material, prepare reports and pupil records.
12. Collect money.
13. Administer remedial drill work.
14. Type and duplicate materials.
15. Assist with art projects.
16. Assist children in learning to read.
17. Supervise and assist children in washrooms and in moving to library, gym, and other classrooms.
18. Supervise and assist in cloakrooms, lunchrooms, halls, on the playground, at street crossings, on buses, and during field trips.
19. Make home contacts for absences, etc.
20. Attend meetings.

B. Secondary School aides

In addition to above:

1. Monitor home room and study hall.
2. Supervise lab work.
3. Assist in the use of research materials and tools.
4. Assemble, display, and disseminate materials.
5. Compute statistical information.
6. Assist librarian.
7. Assist in operation of audio-visual equipment.
8. Lay reading.

Bus Aides

The Municipal Employer has employed paid bus aides for at least the last three years. Bus aides supervise children being transported in buses to and from special education and head-start programs conducted by the Municipal Employer. Such aides are responsible for the custodial care of such children while the children are on the bus. They are also responsible for helping the driver, upon his or her request, to assist children in boarding or leaving the bus. The precise number of hours worked by any one bus aide depends upon the length of the bus route to which he or she is assigned. On the average, bus aides work two hours (two one-hour trips) per school day or ten hours per week.

Bus aides are assigned to their buses at the beginning of the year with the number of aides depending upon the number of buses needed to service the students in the above-mentioned programs. Some

adjustments are made in routes and possibly in the number of aides assigned during the school year in response to changing transportation needs, though no aide has ever been terminated on account of such changes. It was noted that the Municipal Employer has experienced "high" turnover of employes within these positions, though the Municipal Employer was unable to meaningfully quantify such turnover. The bus aides are paid by check in the same manner as other aides, and they are paid at an hourly rate for the normal length of time for their particular bus route. Thus, they do not maintain their own time records nor, of course, do they punch a clock. While the Municipal Employer carries Workman's Compensation for all of its employes, including bus aides, the Municipal Employer does not provide bus aides with any of the fringe benefits received by other categories of aides. Those fringe benefits include health insurance, sick leave, Wisconsin Retirement Fund contributions, life insurance, vacations (other than school vacations) and paid holidays.

When they are not supervising children on the buses, the bus aides are either housewives or college students.

Noon-Hour Supervisors

The Municipal Employer has employed paid noon-hour supervisors for at least the past ten years. Noon-hour supervisors supervise the behavior of students and care for their safety during the noon lunch break. Their work involves patrolling of lunchrooms, surrounding corridors and possibly playgrounds. Depending upon the number and length of lunch sessions scheduled by the particular school in which a noon-hour supervisor is assigned, he or she will work from thirty minutes to ninety minutes per school day. Some work every school day, some are employed for part of a year, some for a few days and some are on call only on inclement days. Thus, a regular noon-hour supervisor might work up to seven and one-half hours per week, but a lesser maximum is more common. It should be noted that building principals may, in their discretion (and do on occasion), give preference in hiring to noon-hour supervisors to their teaching staff. When teachers are employed as noon-hour supervisors, they are paid in accordance with the Municipal Employer's collective bargaining agreement with the Kenosha Teachers Education Association. Decisions as to the number of noon-hour supervisors to be employed in any given location are made by the Superintendent upon each principal's recommendation. The number employed depends upon the ages of and behavioral problems experienced among the students in each school as well as upon the number of lunch sessions required to accommodate the students in each particular school.

The nonteacher noon-hour supervisors are paid monthly (on a per lunch-session-worked basis) whereas all other aides are paid weekly. Although the Municipal Employer carries Workman's Compensation covering noon-hour supervisors, none of the nonwage fringe benefits described above have been paid to these employes.

POSITIONS OF THE PARTIES

With respect to the two issues stated above, the Union takes the position that if an employe has regular hours, no matter how few, that employe is entitled to representation with respect to his wages, hours and conditions of employment. The Union claims only those employes who are regularly employed, and not those who are on call for intermittent or sporadic work assignments. The Union concludes that since at least some of the bus aides and noon-hour supervisors are regular part-time employes, each of those categories should be expressly included in the unit description.

The Municipal Employer emphasizes that none of the employees in either category works more than three hours per day. The Municipal Employer also notes that bus aides and noon-hour supervisors have not received any of the fringe benefits historically paid to the other groups of aides and asserts that the employees in the two disputed categories do not consider their work for the Municipal Employer to be a career. Finally, the Municipal Employer notes that it has experienced a high degree of turnover among employees in both of the categories at issue. For all of those reasons, the Municipal Employer argues that the bus aides and the noon-hour supervisors lack a community of interests with the balance of the bargaining unit necessary for their inclusion therein.

DISCUSSION

Section 111.70(4)(d)2a of the (Wisconsin) Municipal Employment Relations Act provides, in pertinent part, as follows: "The Commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force." In making bargaining unit determinations, the Commission has repeatedly stated its policy of not requiring that part-time employees work a specified number of hours in order for such employees to be included among those eligible to participate in an election. See, e.g., Phillips Bros., Dec. No. 4606, 9/57; St. Anthony's Hospital, Dec. No. 4762-A, 7/58; Luther Hospital, Dec. No. 4582-A, 8/57. In the Luther Hospital case, supra, the (then) Board concluded as follows: "If an employee is regularly employed, regardless of the number of hours worked by him weekly, the Board is of the opinion that such an employee has a definite interest in the wages, hours and working conditions governing his employment. . . ." Unless the Commission is presented with special circumstances indicating that a group or groups of regular part-time employees do not in fact have a "definite interest in the wages, hours and working conditions governing (their) employment", such employees shall be deemed eligible for inclusion in the bargaining unit and for participation in the election. cf., City of Arcadia, Dec. No. 8726, 10/68.

The record in the instant case does not present special circumstances sufficient to justify a decision not to include the bus aides and noon-hour supervisors within the collective bargaining unit. The fact that there is high turnover in certain of the disputed positions may be indicative of the need for collective representation of such employees rather than indicative of the employees' lack of an interest in the terms and conditions of employment under which they work. The fact that certain employees have historically received less favorable terms and conditions of employment than others does not, without more,^{2/} conclusively establish that the bus aides and noon-hour supervisors may not be combined with the rest of the aides into a single bargaining unit.

^{2/} The Commission found "more" in City of Arcadia, Dec. No. 8726, 10/68. In that case regular part-time employees were not included within the bargaining unit because they limited their hours of work so as to avoid exceeding the income maximums permitted for retention of their Social Security benefits. That fact (and others) led the Commission to conclude that the employees involved did not share a community of interests with the balance of the employees in the employer-proposed unit. Even the Social Security pensioner rationale outlined above has been drawn into question recently. Compare Hoosier Desk Co., 65 NLRB 785, 781 17 LRRM 246 (1946) and Taunton Supply Co., 137 NLRB, 221, 222-23, 50 LRRM 1154 (1962) with Diana Shops of Washington State, Inc., 170 NLRB 698, 67 LRRM 1480 (1968)(dictum).

Furthermore, the record indicates that there is a considerable similarity between the work of the bus aides and noon-hour supervisors on the one hand and that of the rest of the aides in the claimed unit on the other. The employes in both groups are responsible, to a greater or lesser extent, for the supervision of students.^{3/} For that reason, the Commission is satisfied that the bus aides and noon-hour supervisors have a community of interests with the other aides sufficient to warrant their inclusion in the same bargaining unit.

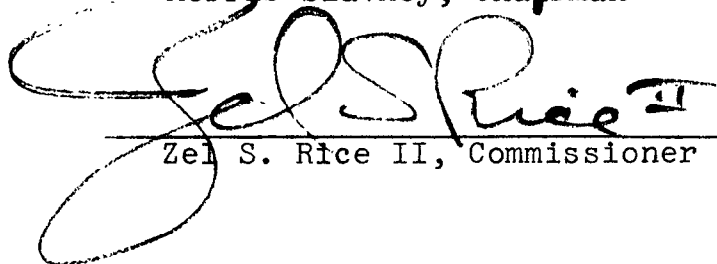
For all of the foregoing reasons, the Commission concludes that "bus aides" and "noon-hour supervisors" should be expressly included categories of employes in the instant collective bargaining unit. Of course, to the extent that individual employes within the bargaining unit described herein are not regular employes, such employes would be excluded by the terms of the bargaining unit determined herein.

Dated at Madison, Wisconsin, this ^{19th} day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

^{3/} See especially items A. 6, 7 and 18 and B. 1 and 2 on the foregoing list of "aide" duties.