

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----

In the Matter of the Petition of	:	
	:	
MILWAUKEE TEACHERS EDUCATION ASSOCIATION:	:	Case XLIX
and MILWAUKEE BOARD OF SCHOOL DIRECTORS :	:	No. 16747 DR(M)-44
	:	Decision No. 11820
For a Declaratory Ruling Under Sub-	:	
Chapter IV of Chapter 11 of the	:	
Wisconsin Statutes	:	
	:	
Involving Certain Employees Employed	:	
in the	:	
	:	
MILWAUKEE BOARD OF SCHOOL DIRECTORS	:	
	:	

-----

Appearances:

Mr. Nicholas M. Sigel, Assistant City Attorney and Mr. Edward Neudauer, Acting Negotiator, appearing for the Employer.

Mr. Richard Perry, Attorney and Mr. Don Deeder, Assistant Executive Director appearing for the Association.

DECLARATORY RULING

The Milwaukee Teachers Education Association and the Milwaukee Board of School Directors, during a related representation hearing held on September 15, 1972, in Milwaukee, Wisconsin before the full Commission, having jointly requested a Declaratory Ruling as to whether the classification of Music Teacher 550N should be included in the unit certified in Case XVI, Decision No. 8030, dated June 9, 1967, and during the aforementioned hearing the parties offered evidence and arguments, 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 Ruling.

FINDINGS OF FACT

1. That the Milwaukee Teachers Education Association, hereinafter referred to as the MTEA, is a labor organization and maintains its offices at 3917 West Capitol Drive, Milwaukee, Wisconsin.
2. That the Milwaukee Board of School Directors, hereinafter referred to as the Employer, operates a school in Milwaukee, Wisconsin and has its administrative offices at 5225 West Vliet Street, Milwaukee, Wisconsin.
3. That the Commission, subsequent to a duly conducted election, on June 9, 1967, certified the MTEA as the exclusive collective bargaining representative for "all regular teaching personnel teaching at least fifty per cent of a full teaching schedule (including Recreation Instructors V and Vice Principals teaching a full schedule) employed by the Milwaukee Board of School Directors of the City of Milwaukee, excluding substitute per diem teachers, office and clerical employes, and all other employes, supervisors and executives."

4. That the Employer conducts a music instruction program on Saturday mornings in some of the schools in its system and staffs said program by individuals occupying the classification of Music Teacher 550N, which positions are filled by:

- (a) volunteer regular teachers from the school system.
- (b) volunteer teachers from a group of "travelling teachers" within the system.
- (c) volunteer professionals from the Milwaukee Symphony and college students with the required background.

5. That the parties negotiated a per diem rate for teachers, otherwise included in the unit and who volunteered to participate in said program, during collective bargaining on the 1972 agreement between the parties and the results of these negotiations are contained in said agreement.

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

DECLARATORY RULING

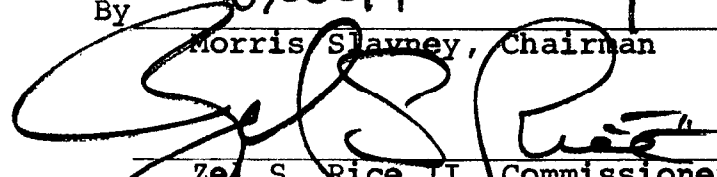
That the classification of Music Teacher 550N, if occupied by a teacher otherwise included in collective bargaining unit consisting of "all regular teaching personnel teaching at least fifty per cent of a full teaching schedule (including Recreation Instructors V and Vice Principals teaching a full schedule) employed by the Milwaukee Board of School Directors of the City of Milwaukee, excluding substitute per diem teachers, office and clerical employes, and all other employes, supervisors and executives", is included in said bargaining unit; and that, however, individuals occupying such classification, who are not otherwise included in the aforementioned unit, are excluded from such unit.

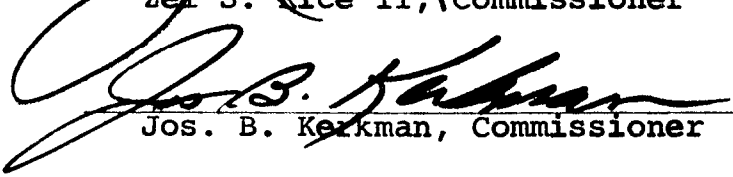
Given under our hands and seal at the  
City of Madison, Wisconsin, this 2nd  
day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slawney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING  
DECLARATORY RULING

On June 26, 1972, District Council 48, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election in a residual unit consisting of all otherwise eligible employees of the Milwaukee Board of School Directors who were not, at the time of filing a petition, included in any of the existing fifteen units. Said case was identified in the Board's records as the Milwaukee Board of School Directors, XXXIX.

During the course of the hearing, two other labor organizations intervened, including the Milwaukee Teachers Education Association, hereinafter referred to as the MTEA. During the hearing, AFSCME disclaimed any interest in including the classification of Music Teacher 550N in said residual unit, and thereupon MTEA and the Employer, on the record, requested the Commission to issue a declaratory ruling to determine whether said classification should be included in the appropriate unit presently represented by the MTEA, which unit consists of "all regular teaching personnel teaching at least fifty per cent of a full teaching schedule (including Recreation Instructors V and Vice Principals teaching a full schedule) employed by the Milwaukee Board of School Directors of the City of Milwaukee excluding substitute per diem teachers, office and clerical employees, and all other employees, supervisors and executives".

The record discloses that the Music Teacher 550N is involved with instructional classes held on Saturday mornings in several of the schools operated by the Employer. Participation by individuals occupying such position is on a voluntary basis and payment is on a per diem schedule. Said positions are filled from teachers who are already included in the aforementioned appropriate collective bargaining unit, from professional musicians in the employ of the Milwaukee Symphony and with college students having an appropriate background.

The parties bargained on the per diem rate for the music teachers participating in the Saturday program and such rate was included in the 1972 collective bargaining unit excluded by the parties.

The fact that the application for the Music Teacher 550N position is voluntary, and the fact that such classes are conducted on Saturday, outside of the normal teaching hours and teaching days, are not determinative as to whether Music Teachers 550N should or should not be excluded from the existing unit presently represented by the MTEA.

We conclude that, in order to effectuate the policies of the Municipal Employment Relations Act, teachers who are otherwise included in the existing "teacher" bargaining unit, noted above, who participate as Music Teachers 550N are to be included in the collective bargaining unit also as Music Teachers 550N and as a result, the wages, hours and the conditions of the employment of said teachers while teaching music on Saturday are subject to collective bargaining. Those individuals occupying the position of Music Teacher 550N who are not normally included in the bargaining unit are deemed not to be included in the bargaining unit even though they are employees of the Employer when they perform their duties as a Music Teacher 550N. We are excluding

such categories of Music Teachers 550N on the basis that they have an insufficient interest in their employment because of the transitory nature of their employment, as well as the fact that many of said individuals are not certificated teachers, albeit they may be qualified to teach music.

Dated at Madison, Wisconsin, this 3<sup>rd</sup> day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Zel S. Rice II  
Zel S. Rice II, Commissioner

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