

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case I
No. 16771 ME-931
Decision No. 12175

Mr. Earl L. Anderson, Coordinator, and Mr. Alvin Goninen,
President, appearing on behalf of the CESA #14.

CESA #14 Speech Pathologists 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 Cooperative Educational Service Agency #14; and hearing on such petition having been conducted at Fennimore, Wisconsin, on August 21, 1973, before Kay Hutchison, Hearing Officer; and the Commission being satisfied that a question has arisen concerning the representation of certain employes of Cooperative Educational Service Agency #14;

DIRECTED

Given under our hands and seal at the
City of Madison, Wisconsin, this 26th
day of September, 1973.

McDermis, Stephen, Chairman

~~Eel B. Rice II, Commissioner~~

No. 12175

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION

Although not directly raised as an issue during the course of the hearing, the representatives of CESA #14 imply that the agency does not function as an Employer of the employees petitioned for herein. Specifically, CESA #14 cites its contractual relationship with local subscribing Districts and its lack of taxing authority as evidence of limited discretion and control in an Employer-employee relationship.

Similar arguments were raised before this Commission in Speech Clinicians of CESA #6, (9989), 11/70. In that proceeding CESA #6 argued that it did not constitute a Municipal Employer within the meaning of Section 111.70(1)(a) of the Wisconsin Statutes in that:

"... the school districts within the geographical boundaries of CESA constitute the Employers of the employees involved, and that CESA is nothing more than the hiring agent for said school districts. In support of its position CESA relies on the fact that its budget is set by statute . . . and that it does not have the power to levy taxes."

In Speech Clinicians of CESA #6, the Commission found that:

"The nineteen Cooperative Educational Service Agencies in the State of Wisconsin were established as intermediate units under which school districts could, on a cooperative basis, obtain certain services and programs provided by CESA which otherwise would be impossible. It has been the history of the Cooperative Educational Service Agency that the people employed by said agencies and provided to the local school districts have generally been specialists of one kind or another which the school district because of its size would not be able to provide for itself. Thus, many of the educational service agency employees are specialists such as speech therapists, school psychologists, social workers, learning difficulty specialists, reading specialists, and the like. These specialists are employed under a contract with the agency and the services of these employees are then sold to the local school districts which comprise the agencies. Thus a speech therapist may serve two or three school districts on a cooperative basis. The hiring, firing and establishing of wages and working conditions of said specialists falls within the authority of CESA. The fact that said agency must operate within a statutory budget . . . and that said agency has no power to levy taxes, it is not controlling, inasmuch as said agency has the authority to hire, fire and establish the wages and working conditions of said employees. Contrary to CESA's claim, it is apparent that CESA is an employer rather than an agent of the school districts within its boundaries.

Therefore the Commission concludes that CESA is an authority and entity by general law and therefore a political subdivision of the state, within the meaning of Section 22.166(2)(e) and a Municipal Employer within the meaning of 111.70(1)(a) of the Wisconsin Statutes . . ."

The only issue raised in the proceeding concerned the appropriate scope of the collective bargaining unit. In its petition, the Petitioner requests an election among all Speech Pathologists

employed by CESA #14. Contrary to the Petitioner, CESA #14 asserts that the appropriate collective bargaining unit should consist of the following employes of the agency; the Speech Therapists, School Psychologists and the Special Education Director.

CESA #14 presently employs nine Speech Pathologists, two School Psychologists and a Special Education Director. The incumbents of all of said positions hold bachelor's degrees. The School Psychologists have completed two additional years of academic preparation and the Special Education Director holds a Masters degree. All the positions are certified through the Department of Public Instruction although the terms of certification vary with the three classifications.

The Speech Pathologists are generally assigned individually to serve two or three schools. Each of the School Psychologists divides his working time between four local schools. The Special Education Director functions in twenty-two of the subscribing school districts.

Due to the proportionately greater number of Speech Pathologists employed by CESA #14, the incumbents have been paid according to a standard salary schedule drafted by CESA #14 and approved by the local participating boards. The School Psychologists, and apparently the Special Education Director, are paid on an individual basis rather than according to the established salary schedule.

The employes are immediately supervised by personnel in the local districts to which they are assigned. Additional supervision or evaluation is provided by specialists in the Department of Public Instruction in each of the three respective categories. CESA #14 issues payroll checks to all the employes relevant herein.

Section 111.70(d)2a of the Municipal Employment Relations Act states that:

"The [Wisconsin Employment Relations] commission shall determine the appropriate bargaining unit for collective bargaining. . . In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. . ."

We are satisfied that the Speech Pathologists are employes occupationally distinct from the School Psychologists and Special Education Director. Having reviewed the record, this Commission concludes that the Speech Pathologists constitute an appropriate collective bargaining unit within the meaning of Section 111.70. Thereby, we have not included the positions of School Psychologists and Director of Special Education among those eligible to participate in the election directed herein.

Dated at Madison, Wisconsin, this 26th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Zel S. Rice II, Commissioner