

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :  
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 SAUK-PRAIRIE SCHOOL DISTRICT :  
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 For Clarification of the Bargaining :  
 Unit for Certain Employes of :  
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 SAUK-PRAIRIE SCHOOL DISTRICT :  
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Case III  
 No. 17101 ME-971  
 Decision No. 12240-A

ORDER CLARIFYING BARGAINING UNIT

Sauk-Prairie School District, having requested the Wisconsin Employment Relations Commission, herein Commission, to clarify the existing collective bargaining unit to determine whether Wilma Henning is to be included in the bargaining unit consisting of "all contracted and certificated teachers, head teachers, department heads, special teachers, guidance counselors, librarians, and teachers teaching one-half time or over . . ."; 1/ and a consolidated unit clarification and prohibited practices 2/ hearing in the matter having been held at Baraboo, Wisconsin on December 3, 1973, before Hearing Officer George R. Fleischli; and the parties thereafter having filed briefs; and the Commission having considered the evidence and being fully advised in the premises, makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

That Wilma Henning is a teacher's aide and is therefore excluded from the above-described collective bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin this *8<sup>th</sup>* day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
 Morris Slavney, Chairman

Howard S. Bellman  
 Howard S. Bellman, Commissioner

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1/ Presently represented by the Sauk Prairie Education Association.  
2/ The prohibited practice case is dismissed in a separate decision issued today.

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

As noted above, the primary issue herein centers on whether Wilma Henning should be included in an established bargaining unit which consists of teachers, "teaching one-half time or over . . ."

Arguing for such inclusion, the Association primarily asserts that Henning performed the duties of a teacher during the 1972-1973 school year and that Henning then received the same benefits and enjoyed the same working conditions as did unit teachers. 3/ The Employer, on the other hand, maintains that Henning was hired and worked as a teacher's aide, and that, therefore, she should be excluded from the teachers' bargaining unit.

In determining whether Henning should be included in the bargaining unit, it is necessary to first consider certain background facts as those facts help clarify Henning's status.

On this point, the record established that Henning was employed as a full-time elementary teacher at the Employer's Merrimac Elementary School from about 1968 through the end of the 1971-1972 school year, during which time she was in the pertinent bargaining unit. In early 1972, Henning became ill and was on sick leave. During her absence, the Employer hired another teacher to replace Henning for the remainder of the year. As a result, when Henning returned to work in the Spring of 1972, she was unable to return to her prior elementary teaching duties. Accordingly, she was then relieved of her prior teaching assignment and, instead, was assigned to perform a number of new duties - such as teaching first aid, duplicating and cataloging cards, clearing up audio-visual equipment, checking books, ordering materials, assisting in giving math tests, etc.

With respect to Ms. Henning's employment for the following school year, the Employer's then District Superintendent, Gerald A. Eyler, advised Henning by letter dated March 13, 1972, that she would be hired as a teacher's aide, and not as a teacher, and therein stated as follows:

"A contract to teach at Merrimac during the 1972-73 school year is not being prepared for you at this time, as it was indicated that you wished reassignment into an instructional materials center aide position. Due to the number of problems encountered with youngsters and parents this past year, it is our feeling that you could function much better in an IMC position rather than being in a classroom at Merrimac.

Aide positions are not contracted for at the same time teaching contracts are offered. This will be discussed with you in the near future.

Thank you for your understanding." (Emphasis added)

Henning at that time did not object to her being hired as a teacher's aide.

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3/ The Association makes no claim to the effect that if Henning is an aide, she nonetheless should be included within the teachers' bargaining unit upon the basis of a shared community of interest. Accordingly, the Commission does not rule on this issue.

Thereafter, and well past the time that teachers' contracts had been offered, Henning signed a contract with the Respondent on June 22, 1972, which provided that Ms. Henning was to perform four duties for the 1972-1973 school year: to coordinate hearing and eye checks, to conduct First Aide instruction, to substitute as a teacher as requested, and to "assist" at the Employer's instruction materials center (IMC).

Pursuant to the terms of that contract, Henning thereafter worked during the 1972-1973 school year, at which time she performed the four enumerated duties listed above. At that time, Henning worked under some of the same working conditions and received many of the same benefits accorded to teachers in the bargaining unit.

Towards the end of the school year, Henning advised the Employer by letter dated April 11, 1973, that she had not been issued a notice of nonrenewal for the upcoming school year and that, therefore, she would be continuing as a teacher for the 1973-1974 school year, pursuant to Section 118.22 of the Wisconsin Statutes. <sup>4/</sup> In reply, the Employer pointed out that Henning had been hired as a teacher's aide, not as a teacher, and that, as a result, she was not covered by Section 118.22 which was applicable only to teachers. Following unsuccessful attempts to resolve the question of Henning's status, the Employer filed the instant request for unit clarification and the Association thereafter filed a related prohibited practice complaint.

In resolving the question of Henning's status, the Commission notes that there are a number of factors which tend to support the Association's claim that Henning is a teacher who should be in the bargaining unit. Thus, for example, the record shows that Henning performed some duties which could be considered as somewhat teacher-related, that she worked under some of the same conditions as did teachers in the unit, and that she received many of the same benefits accorded to teachers.

These factors, however, do not stand alone, but rather, must be considered along with the other facts herein which support the Employer's position that Henning was a teacher's aide during the 1972-1973 school year. For example, with respect to Henning receiving the same benefits as bargaining unit personnel, the record establishes that the Employer granted some of those benefits because it desired to reward Henning for her prior service as a teacher. Accordingly, it continued Henning under the same teachers' insurance coverage which she had enjoyed as a teacher so as to avoid the necessity of Henning having to take the physical examination which would otherwise be needed if she were to change insurance policies. Similarly, the Employer made contributions on Henning's behalf into the teachers' State Retirement Fund because Henning had supposedly indicated that she would be leaving after one year and that she wanted retirement credit for the 1972-1973 school year.

As to the question of Henning's working conditions, the record further reveals that she was placed in a somewhat special category, as evidenced by the fact that she was permitted to attend teachers' staff meetings, but only if her regular duties did not conflict with those meetings. The teachers in the bargaining unit, on the other hand, were not placed under the same restriction as was Henning, but rather were

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<sup>4/</sup> Section 118.22 provides in part that if a school board fails to give either notice of renewal or notice of nonrenewal by March 15, that a "teacher" then has the option of accepting continued employment as a teacher provided that the teacher so notifies the school board by April 15.

expected to attend the staff meeting, regardless of whether they had other matters pending. Further, it appears that the bulk of Henning's duties could have been performed by non-bargaining unit personnel; and additionally, the record fails to establish that the remainder of Henning's other duties could only have been performed by certified teachers in the bargaining unit.

Finally, and most importantly, the record establishes that Henning was expressly hired as a teacher's aide and that she accepted employment as an aide. Thus the Employer's above-quoted March 13, 1972 letter to Henning expressly states that "a contract to teach . . . is not being prepared for you . . . [since] you wished reassignment into the instructional materials center aide position" and that "Aide positions are not contracted for at the same time teaching contracts are offered". (Emphasis added) Henning, at that time, raised no objection to not being hired as a teacher and on June 22, 1972, signed 5/ a contract with the Respondent which provided in pertinent part:

"It is hereby agreed between the Board of Education of the Sauk Prairie Public Schools, Sauk City, Wisconsin and

MRS. WILMA HENNING

That the said Wilma Henning is to perform the duties of as set forth below in and for the SAUK PRAIRIE SCHOOLS for the term of 190 days for the sum of \$5,700.00 per annum, payable in 12 monthly installments of \$475.00 each, commencing August 28, 1972.

5/ Henning testified that when she signed her contract, the Respondent's Business Manager, Blanchard, told her that she was still a teacher because of her substitute duties, that Henning was still eligible to join the Association, and that Blanchard also advised her that "you're a little special and you have special things to do." Although the Association relies on these statements in support of its claim that Henning was hired as a teacher, the Commission finds that these statements are insufficient to warrant such a finding. Thus, since Henning may have been eligible to join the Association by virtue of her prior teaching duties even though she was no longer a full-time teacher during the 1972-1973 school year, Blanchard's statement to the effect was at best ambiguous. Similarly, although Blanchard advised that Henning would still be a teacher by virtue of her substitute teaching duties, it is significant that Blanchard at no time, explicitly advised Henning, either that she would be in the bargaining unit, or covered by the collective bargaining agreement. Since the contract provides that only those teachers "teaching one-half time or over" are covered by the contract Blanchard's statement that Henning would be teaching is entirely consistent with the other facts herein, which establish that Henning's teaching duties did not constitute the majority of her work and which shows that she would be working as a teacher's aide to perform "special" duties, pursuant to the Employer's March 13, 1972 letter to the effect that Henning would be hired as a teacher's aide. It is true that in nontechnical conversation Henning could be identified as a teacher on the basis of her substitution duties, without any intention to warrant unit membership.

1. Assist Madison Street I.M.C.
2. Substitute at Madison and Spruce as requested.
3. Conduct First Aid Instruction at Madison and Outlying schools.
4. Coordinate hearing and eye checks in District Schools."

That contract was different in form from the one which teachers were normally offered, and was significantly dissimilar to Henning's teaching contract for the then expiring 1971-1972 school year. For example, the June 22, 1972 contract specifically provided that Henning would have to substitute "as requested". The requirement that Henning serve as a substitute is noteworthy because the Employer could not impose a similar requirement upon a teacher in the bargaining unit, since the collective bargaining agreement between the Association and the Employer specifically provided that:

"Teachers will be asked to act in the capacity of a substitute teacher only in cases of emergency. Teachers have the privilege to decline this assignment." (Emphasis added)

Here, of course, Henning did not have the right to decline such substitute assignments. Similarly, with respect to two other duties enumerated in that contract, i.e., coordinating hearing and eye tests and assisting at the Madison Street Instructional materials Center(IMC), the record shows that the performance of those duties did not necessitate the holding of a teaching certificate, and further the record is in conflict as to whether some of Henning's other duties can only be taught by a certified teacher. In any event, the June 22, 1972 contract is most significant in that, unlike Henning's previous teaching contract, it (1) did not indicate that Henning was being hired as a teacher; (2) did not include the phrase "specific teaching assignment,"; (3) did not state that Henning was a "professionally trained educator"; and (4) did not contain the clause found in teachers' contract that:

"IT IS HEREBY AGREED, that this contract incorporates herein by reference to have the same effect as if made a part of the negotiated agreement and salary schedule entered into by and between the Sauk Prairie Education Association and said School Board dated \_\_\_\_\_ and is subject to all terms and conditions of such negotiated instruments. This contract is subject to all polices [sic], rules or regulations of said School Board now existing not inconsistent or in conflict with said negotiated agreement."

Taken together, then, the foregoing establishes that Henning was expressly hired as a teacher's aide, and not as a teacher.

Because the intent of the parties regarding Henning's status was so clear, and in light of the fact that Henning primarily performed the duties of a teacher's aide during the 1972-1973 school year, and since Henning's special status was reflected in the fact that she, unlike teachers, was allowed to attend the teachers' staff meetings, only if she did not have any other matters pending, the Commission finds that Henning is a teacher's aide, and that, therefore, she should be excluded from the teachers' bargaining unit.

Dated at Madison, Wisconsin this 8<sup>th</sup> day of November, 1974

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner