

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

GREENDALE BOARD OF EDUCATION

and

GREENDALE EDUCATION ASSOCIATION

for a Declaratory Ruling

Case VII

No. 16852 ME-948

Decision No. 12611

ORDER CLARIFYING BARGAINING UNIT

Greendale Board of Education and Greendale Education Association having jointly petitioned the Wisconsin Employment Relations Commission for declaratory ruling as to whether Bonnie Anderson, Judith Burrows and Cheryl Bogner, as substitute teachers in the employ of the Greendale Board of Education, are properly included or excluded from the voluntarily recognized collective bargaining unit consisting of all full-time certified employees of the District engaged in teaching, including classroom teachers, librarians, and guidance counselors in the employ of Greendale Board of Education, but excluding the Superintendent of Schools, Assistant Superintendent, Business Manager, Director of Recreation and Adult Education; Principals, Assistant Principals; Team Leaders, Unit Leaders, and Department Heads while performing those duties associated with the assignment; and hearing in the matter having been held on July 18, 1973, Kay Hutchison, Hearing Officer, having been present; and the Commission having considered the evidence, arguments and briefs of Counsel, and being fully advised in the premises, and being satisfied that the issues involved herein should be treated as a unit clarification petition under Section 111.70(4)(d) of the Municipal Employment Relations Act, rather than a declaratory ruling under Section 111.70(4)(b) of the Municipal Employment Relations Act, makes and issues the following

ORDER

That Bonnie Anderson, Judith Burrows and Cheryl Bogner, as substitute teachers, as well as other substitute teachers, identified as either short-term substitute teachers, long-term substitute teachers or replacement teachers, shall be, and hereby are, excluded from the collective bargaining unit described above.

Given under our hands and seal at the  
City of Madison, Wisconsin this 8th  
day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

*Marjorie Slavney*  
Marjorie Slavney, Chairman

*Eel S. Rice II*  
Eel S. Rice II, Commissioner

*Howard S. Bellman*  
Howard S. Bellman, Commissioner

No. 12611

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

The instant proceeding was initiated by the joint petition for a declaratory ruling of the Greendale Board of Education, hereinafter referred to as the District, and the Greendale Education Association, hereinafter referred to as the Association, requesting that the Commission clarify an existing collective bargaining unit with regard to the appropriate inclusion or exclusion of certain specified substitute teachers. During the course of the hearing, the Association, contrary to the District, averred that the aforementioned positions are appropriately included in the voluntarily recognized collective bargaining unit consisting of all full-time certified employees of the District engaged in teaching, including classroom teachers, librarians, and guidance counselors, but excluding the Superintendent of Schools, Assistant Superintendent, Business Manager, Director of Recreation and Adult Education; Principals, Assistant Principals; Team Leaders, Unit Leaders and Department Heads.

The Commission has treated this case as a unit clarification petition under Section 111.70(4)(d) not as a declaratory ruling proceeding under Section 111.70(4)(6) because the instant petition requests a determination of "unit status", not for a determination of the duty to bargain on a particular subject.

Short-term Substitute Teacher

Short-term substitute teachers are employed by the District on a day-to-day basis. Such employees replace ill or absent regular full-time teachers in one assignment for a period which does not exceed ten consecutive days. Short-term substitutes are compensated at the rate of \$25.00 per day.

Long-term Substitute Teacher

In the event that a substitute serves in a continuous assignment for a period of 11 to 20 consecutive days, the position is designated as a long-term substitute. As of the 11th consecutive day in a given assignment, the long-term substitute is compensated at the per diem rate of \$28.00 retroactive to the first day of the substitution.

Replacement Teacher

A substitute teacher who has occupied a particular vacancy for 21 consecutive days or more is termed a replacement teacher. The first 20 days of such assignment are compensated in the manner described above for the long-term substitute. Subsequent to the 20th day, the replacement teacher is paid the per diem rate of the negotiated bachelor's degree base salary with no teaching experience increment. For the 1972-1973 school year, the replacement teachers' per diem was \$42.57.

Persons employed as short-term substitutes, long-term substitutes and replacement teachers are certified teaching personnel. Substitutes do not receive any of the fringe benefits which are afforded to regular full-time employees. Long-term substitutes and replacement teachers may participate individually in the state teachers' retirement system. However, the District makes no retirement contribution for the substitutes as it does for regular employees. Substitutes receive neither an employment contract nor any indication of possible continued or future employment with the District. The wages, hours and conditions of employment for the substitute and replacement teachers are unilaterally established by the Greendale Board of Education.

POSITIONS OF THE PARTIES:

During the course of the hearing, the Association argued that the short-term substitute teacher, long-term substitute teacher, and particularly, the replacement teacher, as certified teaching personnel performing the duties of regular full-time teachers for substantial periods of time, are regularly employes in such positions and thereby should appropriately be included in the existing collective bargaining unit. However, in its brief, the Association states that:

"The Wisconsin Employment Relations Commission has held . . . substitute per diem teachers working less than thirty (30) days in a given school year Milwaukee Board of School Directors, (Dec. No. 8901) 2/69, Aff. Dane Co. Cir. Ct. 6/70; to have casual status and not be employes within the meaning of sec. 111.70. Certainly per diem substitutes called on a day to day basis fall into this category. This is true of both short term and long term substitutes in the Greendale School District." 1/

The Association argues that the replacement teachers are not casual employes, as the District contends, in that they do not share the duties or conditions of employment of short or long-term substitute teachers. The Association asserts that the replacement teachers provide the same teaching services as regular full-time teachers do over an extended period of time. The Association avers that the Commission has based determinations with regard to the casual employment status of positions upon considerations of the regularity of employment. The Association notes that the Commission in Milwaukee Board of School Directors (8901) 2/69, (Aff. Dane Co. Cir. Ct. 6/70) found substitute teachers employed at least 30 days out of the school year to be employes within the meaning of the Municipal Employment Relations Act.

The Association asserts that replacement teachers, such as Bonnie Anderson and Cheryl Bognar, who are specified in the instant petition, were employed by the District on a regular prolonged basis during 1972-73 school year. Ms. Anderson, a certified teacher, was employed from August, 1972 to January, 1973 as a teacher aide, whereupon she was employed as a replacement teacher until the end of the 1972-73 second semester. Ms. Anderson was hired as a regular full-time teacher for the 1973-74 school year. Her 1973-74 teaching contract indicated that she had been credited with one year teaching experience outside the District and a half year experience credit as a replacement teacher for the District. Subsequent to working eight months as a teacher aide in the District, Cheryl Bognar, a certified teacher, was employed as a replacement teacher from April, 1973 to the end of the 1972-73 school year. Ms. Bognar was issued a regular full-time teaching contract for the 1973-74 school term and was credited with a semester's teaching experience as a result of her employment as a replacement the previous school year.

The Association further asserts that the replacement teachers share a community of interest with the regular full-time teachers which warrants their inclusion in the existing collective bargaining unit. The Association emphasizes that the replacement teachers are certified personnel and assume the same work assignments as regular full-time teachers over a prolonged period of time which may be of a semester's duration or more. Replacement teachers participate in parent-teacher conferences, departmental budget meetings and team teaching.

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1/ Association brief, pp. 21-22.

The Association further notes that in some situations the District has tendered employment contracts to certain employes filling mid-year vacancies rather than appointing a replacement teacher. Thereby, the Association concludes that employes assuming replacement positions with the District during the school year are not casual employes and have a community of interest with regular full-time teachers. The Association argues that the replacement teachers are appropriately included in the existing collective bargaining unit consisting of regular full-time teachers in light of their mutual certification, the nature of the work assignment and the regularity of employment. 2/

The District avers that the three aforementioned positions are occupied by per diem substitute teachers whose employment is casual in nature. Thereby, the District asserts that the substitutes are appropriately excluded from the existing collective bargaining unit consisting of regular certified teachers. The District argues that the substitutes are casual employes in that they are not issued employment contracts and that they work on a call-in rather than regular basis. Accordingly, the District contends that the substitutes do not have a reasonable expectation of continued employment. Furthermore, the District argues that the substitutes do not receive preferential treatment in applications for permanent positions as further indication of their casual status.

The District notes that the Commission has previously held per diem substitutes to be causal employes on the basis that:

" . . . they are [not] regularly scheduled and the number of days taught by the individual teachers during more than a semester of the school year indicates that all of the teachers have taught much less than 50 percent of a normal teaching load." 3/

The District further asserts that the substitutes do not have a community of interest with the regular teaching staff to warrant their inclusion in the latter's unit. The District avers that the conditions of employment for the substitutes are substantially different from those of the permanent staff. The substitutes receive per diem compensation and do not receive payment for experience or education increments or fringe benefits. The District indicates that the Commission has held per diem substitutes to be "a division separate and apart from regular certified teachers." 4/ Thus, the District concludes that the substitute teachers are casual employes who do not have a community of interest with regular teachers and, thereby, are not appropriately included in the existing collective bargaining unit.

#### DISCUSSION:

The positions of the parties, subsequent to the hearing, indicated agreement that short-term and long-term substitute teachers were casual employes and were appropriately excluded from the existing bargaining unit. Therefore, the remaining issue before the Commission concerns the inclusion or exclusion of replacement teachers in the collective bargaining unit consisting of regular certified teachers. The

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2/ Janesville Board of Education (6678) 3/64; Appleton Joint School District #10 (7171) 5/65; Superior Joint School District #1 (6719) 4/64.

3/ Joint School District No. 1 of the City of Bloomer (10820) 3/72.

4/ Milwaukee Board of School Directors (8901) 2/69; aff. Dane Co. Cir. Ct. 6/70. (A decision rendered prior to the amendment to MERA).

District, contrary to the Association, argues that the replacement teachers should, likewise, appropriately be excluded from the existing collective bargaining unit.

In Milwaukee Board of School Directors, the Commission found substitute per diem teachers to be "regular employees, . . . if they have taught at least 30 or more days in the one-year period immediately preceding the date of . . . Direction." The Commission reasoned that per diem substitutes teaching 30 days or more of the school year had a sufficient community of interest in wages, hours and working conditions so as to permit them to participate in a representation election. However, the Commission further held in Milwaukee Board of School Directors that such substitute teachers constituted a division separate and distinct from the unit of regular teaching personnel. The Commission stated that:

"Since substitute per diem teachers are employees engaged in the teaching profession, in a division separate and apart from the regular certified teachers, said division is the residual unit of the employees engaged in the profession of teaching, and therefore, there is no need for a self-determination vote to establish that division as a separate bargaining unit."

It is clearly established that the collective bargaining unit voluntarily agreed to by the parties included only "all full-time certified employees" in the employ of the District, which unit was, and is not, repugnant to the provisions of the Municipal Employment Relations Act relating to the establishment of appropriate collective bargaining units. It is our conclusion that it would be improper to amend the appropriate collective bargaining unit by way of "unit clarification", to include substitute teachers, since the record clearly establishes that the unit has included only those teachers who were employed full-time.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Stavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner