

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MENOMONIE JOINT SCHOOL DISTRICT NO. 1

For clarification of Bargaining
Unit for Certain Employees of

MENOMONIE JOINT SCHOOL DISTRICT NO. 1

Case XI

No. 18400 ME-1115

Decision No. 13128-A

Appearances:

Mr. Guido Cecchini, Representative, appearing on behalf of the
Union.

Solberg & Steans, Attorneys at Law, by Mr. Jack E. Joyce, appearing
on behalf of the Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT

Menomonie Joint School District No. 1, having filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to issue an Order clarifying an existing collective bargaining unit; namely, to determine whether seasonal custodial and maintenance employees are included in the unit consisting of all regular full-time and regular part-time custodial and maintenance employees of said Municipal Employer, but excluding supervisors, managers and all other employees; and a hearing having been held in the matter at Menomonie, Wisconsin, on November 7, 1974, Douglas V. Knudson, Hearing Officer, being present; and the Commission, having considered the evidence, arguments and briefs, and being satisfied that seasonal custodial and maintenance employees are not included in the above described unit.

NOW, THEREFORE, the Wisconsin Employment Relations Commission makes and issues the following

ORDER

That the seasonal custodial and maintenance employees in the employ of Menomonie Joint School District No. 1 are not included in the collective bargaining unit consisting of all regular full-time and regular part-time custodial and maintenance employees of Menomonie Joint School District No. 1, excluding supervisors, managers and all other employees.

Given under our hands and seal at the
City of Madison, Wisconsin this 27th
day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney

Morris Slavney, Chairman

Howard S. Bellman

Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

Following an election conducted by it on December 4, 1973, the Commission issued a Certification of Representatives on December 28, 1973, wherein Wisconsin Council of County and Municipal Employees, Local 727, AFSCME, AFL-CIO was certified as the exclusive representative of all regular full-time and regular part-time custodial and maintenance employees of the Municipal Employer, but excluding supervisors, managers and all other employees. The tally of ballots in that election discloses that eight votes were cast in favor of representation, and six were cast against.

The Commission has held that an existing collective bargaining agreement and the associated question of timeliness does not bar a unit clarification and amendment proceedings as herein. 1/

Although not specifically listed as an exclusion in the certified unit description, the seasonal employees were tacitly excluded by the parties by virtue of the fact that no seasonal employees were listed among the eligible voters in the election resulting in certification, 2/ although the Municipal Employer had employed seasonal employees for several summers preceding said election. The Municipal Employer also employed seasonal employees during the summer of 1974.

The Union contends that the seasonal employees who perform custodial and maintenance work should be included in the certified bargaining unit if they have a reasonable expectation of re-employment, and in that regard the Union contends that the record establishes that of the nine seasonal employees who had performed custodial and maintenance work in the summer of 1974, four had performed the same duties the previous summer. Further, the record indicates that the Municipal Employer, over the past several years, has given preference to individuals who worked the previous summer and would only deny re-employment to those who had a poor work record. The Union further argues that the seasonal employees are performing unit work.

The Municipal Employer, contrary to the Union, opposes the inclusion of the seasonal employees in the unit, contending that the seasonal employees have no reasonable expectancy to return; and further, that those seasonal employees who, during the school year, are employed as teachers should not be included in the unit of non-professional employees, in accordance with an early decision of the Commission. 3/

It is clear to the Commission that seasonal employees are neither regular full-time nor regular part-time employees, and, therefore, they cannot be deemed to be included automatically in the existing collective bargaining unit.

1/ City of Wauwatosa (11633), 2/73.

2/ Menomonie Joint School District No. 1 (11902-C), 12/73.

3/ Stevens Point Board of Education (7713), 8/66.

The Commission will not permit a separate vote among the otherwise eligible seasonal employees to determine whether they desire to accrete to the existing unit since there is a possibility that the results of such a vote could establish two separate units of custodial employees. We will not simply accrete these employees to the unit because of the closeness of the original vote and the possibility that the addition of the instant employees would generate a new question of representation. 4/


Our decision in this regard does not preclude the eventual inclusion of the seasonal employees in the unit, however. If the Union desires the seasonal employees to be included in the unit now represented by the Union, at the proper time, it may file a petition requesting an election of the "overall unit." Seasonal employees who have an expectancy of return to employment will be eligible to vote. In such proceeding we will also reconsider our above-cited decision in Stevens Point Board of Education.

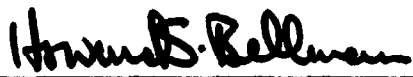
Since the seasonal employees are only employed during the summer months, such an election would, of necessity, have to be conducted during the summer months. The collective bargaining agreement presently in existence covering the custodial employees does not expire until December 31, 1976. Said agreement may be reopened by negotiations on a new agreement no later than thirty (30) days prior to the expiration date. Normally, the Commission will not entertain a petition seeking an election unless it is filed during the period 60 days prior to reopening. 5/ However, should either party desire to file a petition seeking an election in the overall custodial and maintenance unit, including seasonal employees, the Commission will make an exception to its "timeliness" rule, and it will accept such a petition if it is filed following the commencement of the 1976 summer employment. Furthermore, if the Union and the Municipal Employer stipulate for such an election to be held during the summer of 1975, the Commission will process said stipulation.

It should be understood that the Commission's decision of the instant issues is not in any way to be construed or interpreted as having any bearing on Article IX, Section 5, of the existing agreement, which section is entitled "BARGAINING UNIT WORK."

Dated at Madison, Wisconsin this 27th day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner

4/ City of Menasha (11714-A), 6/73.

5/ Wauwatosa Board of Education (8300-A), 2/68.