

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

DISTRICT COUNCIL 48, AFSCME, AFL-CIO :

For Clarification of Bargaining Unit :
of Certain Employees of :

MILWAUKEE BOARD OF SCHOOL DIRECTORS :

Case LIX

No. 18432 ME-1118

Decision No. 13134-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John
Williamson, Jr., Esq., on behalf of District Council 48,
AFSCME, AFL-CIO.

Mr. John B. Brennan, Esq., City Attorney, by Mr. Nicholas M.
Sigel, Esq., Assistant City Attorney, on behalf of
Milwaukee Board of School Directors.

ORDER CLARIFYING BARGAINING UNIT

District Council 48, AFSCME, AFL-CIO, herein Council 48, having
filed a petition with the Wisconsin Employment Relations Commission,
herein Commission, wherein it requested that the Commission determine
whether certain part-time employees employed by the Milwaukee Board of
School Directors, herein the Board, should be included in or excluded
from an existing collective bargaining unit consisting of:

"all employees in the employ of the Milwaukee Board of School
Directors, Department No. 888J, in the classification of Per Diem
Payroll (Social Center), who have been employed 26 or more weeks
during the 12-month period from September 1, 1972, through
August 31, 1973, and who worked 10 or more hours per week
during said period;"

and hearing on said petition having been held on December 11, 1974,
and May 14, 1975, before Hearing Officer Amedeo Greco; and the parties
there having jointly requested that the unit be changed by omitting
all references to particular months and years presently provided for in
the above described unit designation; and the parties thereafter having
filed briefs, which were received by October 29, 1975; and the Commission
having considered the petition, and the record and the arguments of the
parties;

NOW, THEREFORE, it is

ORDERED

That the above described unit is hereby clarified to read:

"All employees in the employ of the Milwaukee Board of School
Directors, Department No. 888J, in the classification of Per

during a 12-month period and who work 10 or more hours per week during said period."

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman



Howard S. Bellman, Commissioner



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER
CLARIFYING BARGAINING UNIT

Council 48 primarily 1/ seeks to accrete approximately 2500 part-time employees, who work less than 26 weeks a year and 10 hours a week to the existing bargaining unit, which presently consists of approximately 50 employees who work more than 26 weeks a year and more than 10 hours a week. In support of its position, Council 48 contends that the petitioned-for employees basically perform the same duties and share the same working conditions as the bargaining unit personnel, and that because of this commonality of interests, such non-represented employees should also be included in the bargaining unit. Acknowledging that the petitioned-for employees have been excluded from voting in a prior representation election conducted by the Commission in 1974, Council 48 nonetheless argues that the criteria utilized in establishing eligibility to vote is distinguishable from that used in determining inclusion or exclusion from the bargaining unit and that, based upon the latter factors, the non-represented employees should be so included in the unit.

The Board, on the other hand, opposes the proposed accretion of the petitioned-for employees, mainly on the grounds that: (1) the parties have previously agreed that such employees would remain unrepresented; and, (2) the unrepresented employees do not share a reasonable expectancy of returning to work for the following year, once their initial assignment is completed.

The record establishes that the aforementioned employees are employed in the Board's Division of Municipal Recreation and Adult Education, which is responsible for providing indoor and outdoor recreational programs primarily 2/ in the Milwaukee area. The programs, provided on a year round basis and roughly divided into fall, winter, spring, summer, and "post season" sessions, are performed at numerous locations (about 279 in number) throughout the Milwaukee area. These programs are recreational activities, from antiques to zoology, with ballroom dancing, 3.D montage, and wig care in between. Because many of the programs are so specialized, it is necessary for the Board to hire many part-time employees who have particular knowledge in these areas. According the Board usually hires employees for the duration of a given program, which in most cases lasts for only a few weeks. Thus, the Board hires approximately 2200-2600 employees in a given year to fill the approximately 3860 positions available. Many part-time employees fill more than one position. 3/ Further, there is an annual turnover rate of about 50% among these employees and employees with prior experience who have performed satisfactorily are given preference for re-employment. Additionally, unit and non-unit employees share similar working conditions, as both groups perform basically the same duties and receive substantially the same wages and benefits.

-
- 1/ Council 48 does not seek to represent employees who are certificated or those who perform professional duties.
- 2/ Several programs are located outside the City of Milwaukee.
- 3/ It appears that the approximately 50 employees in the unit, all of whom work more than 26 weeks a year and 10 hours a week, work in more than one position.

In resolving this issue, the Commission notes that the parties voluntarily agreed in a prior Commission case 4/ that employees who worked more than 26 weeks a year and for more than 10 hours a week were eligible to vote, while employees who did not meet that criteria were excluded from voting. Based upon that stipulation, to which the Board agreed, the Commission thereafter conducted a representation election among the approximately 78 employees who met the foregoing criteria. The then approximately 1800 employees who did not meet that criteria were ineligible to vote, pursuant to the stipulation of the parties. The Commission subsequently certified the results of the election which showed that a majority of eligible employees had selected Council 48 to represent them for collective-bargaining purposes.

In such circumstances, where the parties have voluntarily agreed to the present composition of the unit, and where that agreement was not repugnant to the policies of the Municipal Employment Relations Act, and where Council 48 then knew that the presently petitioned-for employees would be excluded from that unit, and in the absence of any intervening events which materially affect the status of those employees, the Commission finds that it would be inappropriate to negate the prior agreement of the parties by accreting the petitioned-for employees to the established bargaining unit. Accordingly, the Commission holds that they cannot now be placed within the voluntarily agreed to collective bargaining unit.

The Commission has, however, clarified that unit so as to delete all references to particular months and years, as the parties at the hearing indicated that they had no objection to such a clarification.

Dated at Madison, Wisconsin this 27th day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavbey
Morris Slavbey, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

4/ Milwaukee Board of School Directors, Case XXXIX, Decision No. 12067.