

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case VII
No. 17281 ME-996
Decision No. 13204

No. 13204

MEMORANDUM ACCOMPANYING ORDER DISMISSING
PETITION TO CLARIFY BARGAINING UNIT

The instant proceeding was originally initiated on October 24, 1973, when the instant Petitioner filed a petition requesting the Commission to conduct an election among employees in a claimed appropriate bargaining unit consisting of:

"... the instructional staff of the Fox Valley Technical Institute and all branches (District 12) including fulltime instructors, librarians, counselors, part time teachers and teacher aids [sic] and excluding administrative, secretarial, clerical, custodial and maintenance personnel.";

and wherein the Petitioner further alleged that it was the recognized collective bargaining representative of the instructional staff of the Municipal Employer. The Petitioner specifically requested a ruling in regard to the extent of its representation as it pertained to part-time teachers and teacher aides. Hearing was commenced on November 13, 1973, at which time the Municipal Employer asserted that the teacher aides were then represented by another employee organization, and in that regard were covered by a collective bargaining agreement, and therefore the petition involved was untimely filed. The incumbent representative of the teacher aides was not named in the petition and had not been served with notice of the hearing.

During the course of that hearing, the Petitioner moved to amend its petition to include a number of positions, formerly excluded from the instructional staff bargaining unit as coordinators, in the bargaining unit. The Municipal Employer opposed the amendment of the petition, on the basis that it had insufficient notice of the issues raised concerning the coordinators. The Hearing Officer adjourned the hearing indefinitely, pending the filing and service of an amended petition.

The Petitioner subsequently withdrew its claim concerning the teacher aides and filed a separate petition for an election among said employees. ^{1/} During bargaining for a new collective bargaining agreement, the parties made the recognition of part-time teachers a subject of negotiations and eventually agreed upon the expansion of the voluntarily recognized unit to include certain part-time teachers. Both of the issues raised by the initial petition were thereby resolved without further action by the Commission in the instant proceeding.

On May 10, 1974, the Petitioner filed an amended petition, wherein it described a claimed appropriate unit consisting of:

"This unit shall include all full-time and regular part-time certified employees of the District engaged in teaching, including classroom instructors, librarians, and guidance counselors, but excluding the following:

1. Director, Administrators, Coordinators, and Supervisors
2. Non-instructional personnel
3. Office, clerical, maintenance and operating employees"

In its amended petition, the Petitioner requests the Commission, in effect, to include the following "coordinator" positions in the bargaining unit:

^{1/} Fox Valley Technical Institute, Case VIII, (12844), 7/74.

High School Relations Coordinator, Admissions and Registering Officer, Financial Assistance Director, Director of Placement, Veterans' Affairs-Financial Aids Counselor, Human Development Coordinator-Counselor, Media Production Specialist. A hearing was held on the amended petition on June 4, 1974. The Petitioner filed a written closing argument on June 17, 1974.

At the outset of the June 4 hearing, the parties stipulated that Fox Valley Vocational, Technical and Adult Education District No. 12, operating under the name of Fox Valley Technical Institute, is a Municipal Employer; that the Petitioner is a labor organization; and that the Petitioner is the voluntarily recognized exclusive bargaining representative of the employees in the instructional personnel unit. The parties also stipulated the existence of a collective bargaining agreement which described that recognized unit as consisting of:

". . . all full-time and regular part-time certified employees of the District engaged in teaching, including classroom instructors, librarians, and guidance counselors, but excluding the following:

1. Director, Administrators, Coordinators, and Supervisors
2. Non-instructional personnel
3. Office, clerical, maintenance and operating employees"

Further, the parties stipulated that, as a result of bargaining which occurred between the adjournment of the first hearing and the convening of the second hearing, the parties had reached agreement on a successor agreement for the period August 28, 1974 to August 27, 1975, in which the description of the recognized bargaining unit was expanded to include certain regular part-time teachers.

POSITIONS OF THE PARTIES:

The Petitioner asserts that the coordinator positions in dispute should be included in the existing unit of instructional personnel, in order to conform to the statutory mandate to avoid fragmentation of bargaining units. It also contends that if the positions in dispute constitute all of the "coordinators" or "non-instructional personnel" employed by the Municipal Employer, then the Commission should delete the categorical exclusions of coordinators and/or non-instructional personnel from the unit description.

The Municipal Employer asserted that all of the positions in dispute are managerial or supervisory in nature, and should be excluded from all potential bargaining units as positions aligned with management. Alternatively, the Municipal Employer contends that clarification of the unit to include the positions in question would be inappropriate in view of the bargaining history. The parties agree that the description of the bargaining unit had been a subject of considerable discussion during the recently concluded negotiations between the parties; that the Petitioner during those negotiations sought to have the positions in question added to the bargaining unit; and that the parties settled on the terms of a new collective bargaining agreement which continued the exclusion of said positions.

DISCUSSION:

Because the petition is dismissed on the basis set forth below, the contentions that these positions are supervisory and managerial are not resolved herein.

During the hearing, the Hearing Officer denied the Municipal Employer's motion to dismiss, relying on the decision of this Commission in Joint School District No. 1, City of River Falls, et. al., (12688), 5/74, wherein an election was directed among regular part-time employees formerly excluded from a voluntarily recognized bargaining unit to determine whether a majority of those employees desired to accrete to the existing unit of full-time employees. In River Falls, the Municipal Employer advanced arguments similar to those advanced by the Municipal Employer here on facts concerning bargaining history which are similar to those involved here. In its post-hearing brief, the Petitioner continued its request for an accretion of the positions in question, but asked, in the alternative, for an accretion election of the type directed in River Falls.

In numerous cases issued prior to River Falls, *supra*, the Commission stated and restated the proposition that it will not permit the employees in a portion of an appropriate unit to vote separately on a question of accretion to an existing unit. 2/ There is an obvious defect in such votes in that the employees might vote against accretion, thereby "stranding" themselves as an unrepresented group constituting an inappropriate fragmentation of an otherwise appropriate unit. This possibility was recently recognized and rejected by the Commission in rejecting the stipulation of the parties in Sheboygan Joint School District No. 1, (12897), 7/74, to have an election among employees to determine their desires concerning accretion to a certified bargaining unit. To the extent that it establishes a principle of permitting such votes among portions of the employees in a unit, the River Falls decision no longer represents the Commission's policy.

The Commission has, subsequent to the hearing on the amended petition herein, reconsidered the entire process of unit clarification, and has set forth guidelines for the exercise of its jurisdiction with regard to voluntarily recognized bargaining units. In City of Cudahy, (12997), 9/74, the Commission stated:

"Where there exists a voluntarily recognized unit and where certain classifications of employees have been excluded from the unit, and a party involved in the recognition agreement opposes the proposed expansion, the Commission will not expand said unit without an election in the unit deemed appropriate."

The case at hand clearly involves the historical exclusion of coordinators as a class, and the present effort of the Petitioner to have that category of employees added to the bargaining unit over the objections of the Municipal Employer.

The Petitioner has never sought to have its status as exclusive bargaining representative in the claimed appropriate unit tested in this proceeding through an election in the entire unit. For the reasons stated above, neither an election among the affected employees, nor an accretion of the positions in dispute would be appropriate, and the Commission has therefore dismissed the amended petition filed in this case.

However, should a petition for an election among a residual unit comprised of all unrepresented professional employees be filed with the Commission, which unit might also include those positions involved herein, such a unit will be recognized by the Commission so as to protect the rights of the employees included therein to representation, even in the

2/ City of Cudahy, (11126-A), 4/73; Pierce County, (11843), 5/73; Monroe County, (11913), 6/73.

absence of a petition for an overall vote. Furthermore, should the instant Petitioner appear on the ballot in such a proceeding, and should a majority of the eligible voters vote for representation by the instant Petitioner, the Commission will merge the residual unit with the overall professional unit. 3/

Dated at Madison, Wisconsin, this 10th day of December, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

3/ City of Milwaukee, (13099), 10/74.