

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

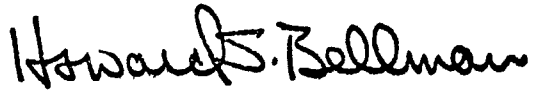
EAU CLAIRE JOINT SCHOOL DISTRICT NO. 5

bargaining with the Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the  
City of Madison, Wisconsin this 11/26  
day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Howard S. Bellman, Commissioner

  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

While the parties were able to stipulate on all other matters preliminary to the conduct of a representation election among the school lunch program employes of the Municipal Employer, they were unable to agree on the question of whether 4 individuals holding the classification of First Cook were supervisors. The Municipal Employer operates 24 schools in a district in and about Eau Claire, Wisconsin, including 4 secondary schools. Each of the 4 secondary schools is equipped with a central kitchen facility which is staffed by a First Cook and various subordinate employes. All of those central kitchens supply food for the school building in which they are located, while 3 of the central kitchens have the additional function of supplying food to be served in "satellite" school lunch programs in the 20 smaller schools operated by the Municipal Employer. In addition to the First Cook assigned to each central kitchen, the central kitchen staffs number 7, 8, 9 and 14 employes. Another 23 employes are assigned to the satellite operations of the school lunch program.

The school lunch program is headed by the Supervisor of School Lunch Program, who reports directly to the Assistant Superintendent in charge of Business Affairs. The Supervisor of School Lunch Program has responsibility for both the central and satellite kitchens, and sets the menus for the complete meals, known as "Type A" meals, served through the school lunch program. The Supervisor of School Lunch Program is responsible for food ordering and distribution for all kitchens. She, along with the First Cooks and the Assistant Superintendent, participates in regular management meetings. The Supervisor of School Lunch Program makes it a practice to visit each of the central kitchens at least once a week and each of the satellite operations two or more times each school year. During such visits, which might last up to 3 hours each, the Supervisor of School Lunch Program does not routinely participate in the work performed in the kitchen, but will assist in the work if there is a need for her to do so.

The First Cooks begin their work day at 6:00 A.M. and are responsible for a range of activities and functions from menu planning to routine food preparation. In addition to the Type A meals prepared for service both in the secondary school where the central kitchen is located and in the satellite operations, each of the central kitchens prepares food to be served in an "ala carte" line at the particular secondary school. The ala carte menus vary from school to school, as they are established independently by the First Cooks in the central kitchens. The First Cooks have considerable discretion with regard to the ala carte menus, limited primarily by price considerations and the need to provide nutritious meals, and it is noted that the majority of the meals served in the secondary schools are served in the ala carte lines. The First Cooks are also responsible for the inventories maintained separately at the central kitchens, and for the forwarding of orders to the Supervisor of School Lunch Program for food and supplies for use in both the prescribed Type A menus and the individual ala carte menus. In the central kitchens which supply food to satellite operations, the First Cooks are responsible for making visits to the satellite operations and overseeing the manner and portions in which food is served in the satellite operations. With the administrative and office functions occupying the remainder of their time, each First Cook spends an average of 5 to 6 hours of her 8 hour work day in the central kitchen itself. There, she assigns work to the employes, oversees the performance of the employes, resolves problems or disputes which might arise among employes, and spends an average of 2 to 3 hours per day in cooking work similar to that performed by the employes.

While the employees working under the direction of the First Cooks including the employees working in the satellite kitchens are paid on an hourly basis for their actual hours worked, the First Cooks, like the Supervisor of School Lunch Program, are paid on a monthly salary. The First Cooks are thus paid their normal salaries during vacation periods occurring during the school year, and their salaries cover a period of nine and one half months per year. The First Cooks are clearly the highest paid personnel in the central kitchens, with an hourly rate 48¢ greater than the next highest paid employees.

Hiring of new employees is accomplished through a procedure wherein applications on file in the Municipal Employer's central office are reviewed by the First Cooks, who then recommend applicants to the Supervisor of School Lunch Program. The recommendations are passed along through the Assistant Superintendent to the Board of Education, which is the ultimate hiring authority. Substitute employees are selected and called by the First Cooks from a listing of available substitutes prepared by the Assistant Superintendent. In situations where applicants for regular employment have previously worked as substitute employees in the school lunch program, the First Cooks have been consulted for their recommendation, and in a situation where a new secondary school and central kitchen was to be opened and staffed, the First Cook sat on the panel which interviewed applicants for employment.

The Municipal Employer has experienced few disciplinary problems among the school lunch employees, and it is anticipated that any serious discipline problems warranting substantial suspensions or discharge would be referred to the top management of the District. However, the First Cook who testified in these proceedings understood it to be within her authority to send employees home if she felt they were too ill or otherwise unfit for work, or to suspend employees if they refused the orders of the First Cook or if a serious disciplinary situation arose at a time when higher management personnel were unavailable. The Supervisor of School Lunch Program testified that she would not make any independent review of the facts in most such situations, relying instead on the recommendation of the First Cook. The Municipal Employer also indicated its intention to establish an evaluation system in the school lunch program wherein the First Cooks would evaluate employees working in their central kitchens on much the same basis as an evaluation system recently established by the Municipal Employer concerning its custodial and maintenance employees.

The Municipal Employer takes the position that the First Cooks are supervisors at the present time, and that they are being given more supervisory responsibility from time to time. In this regard the Municipal Employer particularly points to the visits to satellite kitchens, which are a function added to the responsibilities of the First Cooks during the present school year, and to the plans for the implementation of an evaluation system. The Union, on the other hand, contends that the First Cooks are at most lead workers exercising second or third hand supervisory authority over employees and engaged primarily in the overseeing of an activity. The Union contends that the First Cooks merely implement instructions from their superiors in their dealings with other employees.

The evidence indicates that much of the food preparation work is performed early in the morning, when only the First Cook and a few other employees are present. During a brief initial meeting the First Cook assigns responsibility for portions of the menu exercising considerable judgment reflecting the items to be prepared and the employees available. Thereafter, the First Cook does become actively involved

in the selection, measuring and blending of ingredients for the day's lunch. Food supplies destined for the satellite kitchens are transported during the mid-morning hours, at about the same time that the remaining staffs of the central kitchens report for duty. As the emphasis of the daily routine shifts to the serving of food, cleaning up the kitchen and advance preparation of items for the following day, the First Cook takes less of a hand in the work routine and pursues her other activities. While it is undeniable that the First Cooks do perform work of the same nature as the employees they allegedly supervise, the nature and amount of that work is not so significant as to outweigh other indicia of supervisory authority noted in the evidence. Even while she is working alongside the other employees in the kitchen, it is the First Cook who sets the procedures to be followed and her instructions which are carried out in the preparation of the daily menu.

The limited nature and extent of other supervision of the central kitchen employees is viewed as significant evidence of the supervisory authority of the First Cooks. The Assistant Superintendent in charge of Business Affairs takes almost no direct hand in the day to day operation of the school lunch program, limiting his participation to meetings with the Supervisor of School Lunch Program and First Cooks, and to the few occasions on which a problem cannot be resolved at a lower level. The Supervisor of School Lunch Program makes her headquarters at the central administration offices of the Municipal Employer, from which she coordinates central ordering and distribution functions. Food ordering and inventory are prime subjects for discussion with the First Cooks during her limited visits to the central kitchens. While the Supervisor of School Lunch Program consults with the First Cooks concerning personnel problems encountered by the First Cooks, she becomes involved in such personnel problems and other day - to - day operations of the central kitchens only as a backup to the first line supervision exercised by the First Cooks, and in emergency situations.

Upon review of the entire record, the Commission concludes that the First Cooks employed by the Municipal Employer in its central kitchens are supervisors within the meaning of Section 111.70(1)(0)1 of the Municipal Employment Relations Act and are not municipal employees within the meaning of Section 111.70(1)(b) of MERA. The First Cooks are therefore excluded from the collective bargaining unit and are not eligible to vote in the election which we have directed today.

Dated at Madison, Wisconsin this 11th, day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney -  
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