

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXXVI
No. 18074 ME-1084
Decision No. 13431

Appearances:

Mr. Dennis M. Filippelli, President, on behalf of Kenosha Association
of School Psychologists.

Mr. Wayne Schwartzman, Esq., Staff Counsel, on behalf of Kenosha Education Association Council.

Mr. Gary Covelli, Coordinator of Staff Relations, on behalf of the
Kenosha Unified School District No. 1.

ORDER DISMISSING PETITION

Kenosha Association of School Psychologists, herein Petitioner, having filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act to determine whether certain psychologists employed by the Kenosha Unified School District No. 1, desired to be represented by Petitioner; and hearing on said petition having been held on August 7, 1974 at Kenosha, Wisconsin, before Hearing Officer, Amedeo Greco; and at the outset of the hearing, the Kenosha Education Association Council having been permitted to intervene in the matter on the basis that they presently represent the employees in issue; and the Petitioner and Intervenor having thereafter filed briefs which were received by January 17, 1975; and the Commission having considered the petition, the record, and the arguments of the parties, and being satisfied that the unit requested herein is inappropriate;

NOW, THEREFORE, it is

ORDERED

That the petition filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin this 11th
day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Howard S. Bellman, Commissioner

Herman Torosian, Commissioner

No. 13431

MEMORANDUM ACCOMPANYING ORDER DISMISSING PETITION

Petitioner seeks to represent, for collective bargaining purposes, the approximately nine school psychologists employed by the Employer in its school system. Presently, these psychologists are included in an overall bargaining unit consisting primarily of teaching personnel. Along with these other unit employees, the psychologists are represented by the Intervenor, and are covered under the terms of the existing collective bargaining agreement between the Intervenor and the Employer. It appears that psychologists have been included in this overall bargaining unit since about 1971, at which time they voted in a Commission directed representation election.

The Intervenor opposes the petition mainly 1/ on the ground that the psychologists more appropriately belong to the existing collective bargaining unit. The Employer stated, through Mr. Covelli, that "we have no objection to the petition by the psychologists. . ."

In support of its request that the psychologists be severed from the overall unit, Petitioner relies on several factors which show dissimilarities between the psychologists and other bargaining unit personnel. Thus, Petitioner notes that the training for school psychologists is more extensive than that required for teachers; that psychologists, unlike teachers, are not required to have teaching certificates and do not teach in a self-contained classroom; that psychologists spend more of their time with adults, than do teachers, that whereas teachers impart knowledge to students, as part of their learning process, that psychologists on the other hand, identify and remove disabilities which impede that learning process; and the psychologists work longer hours and work more school days than do teachers. In conclusion, Petitioner claims that psychologists do not share the same community of interest with teachers, and that, as a result, psychologists are not interested in the same collective bargaining goals which have been sought by the teachers in the past.

The record also reveals the existence of certain factors which support the Intervenor's position that the psychologists do share a

1/ At the hearing, the Intervenor raised questions as to whether Petitioner was a labor organization and whether the petition was timely filed.

With respect to Petitioner's status, the Commission has previously held that, "A bargaining representative need not be a labor organization", Village of Grafton, (12718) 5/74. Accordingly, and because Petitioner here intends to bargain for the psychologists, if accorded the opportunity to do so, the Commission finds that Petitioner does have status to file the instant petition.

As to the timeliness of the petition, the record establishes that the contract does not provide any reopening date for the commencement of negotiations, that the Intervenor can request such negotiations at any time, that no definite date has yet been established for such negotiations, and that bargaining unit personnel have not been told when negotiations would take place regarding a new contract. In view of these circumstances, and because the issue herein must in any event be resolved at some point, the Commission concludes that it would be appropriate to consider the substantive issues raised by the filing of the petition.

substantial community of interest with other bargaining unit personnel. For example, the record establishes that: (1) the psychologists work with about ten other bargaining unit classifications in the Exceptional Education Center, (2) that psychologists are directly supervised in the Exceptional Education Center by the same supervisor who supervises the other ten classifications; (3) that psychologists help perform similar diagnostic and counseling services as those performed by other unit employees; (4) that in performing these services, the psychologists are part of a highly integrated task force, which in part is comprised of other unit employees; (5) that, besides psychologists, other unit employees are not required to have teaching certificates; (6) that psychologists are not the only unit employees who work an extended school year and who work past the regularly established school day; (7) that psychologists receive the same contractual benefits accorded to other unit employees, and are on the same salary schedule with these unit employees; and (8) that the Intervenor, for several years, has represented the psychologists for collective bargaining purposes, ever since the psychologists voted in a representative election in about 1971.

In determining whether the psychologists should be severed from the overall unit, the Commission first notes, as stated in Whitefish Bay Education Association, 2/ that:

"Section 111.70(1)(e), Wisconsin Statutes, grants this Commission exclusive jurisdiction to determine units appropriate for the purposes of collective bargaining, subject to the legislature mandate in Section 111.70(4)(d)(2) Wisconsin Statutes, to avoid fragmentation, whenever possible, by maintaining as few units as practicable in keeping with the size of the municipal work force."


This statutorily mandated anti-fragmentation policy does not in all cases necessarily preclude the creation of separate units. Rather, by providing that this policy is to be followed "whenever possible", the statute implicitly acknowledges that separate units can be established under certain circumstances. 3/


Here, however, the Commission finds that there are insufficient grounds to warrant the establishment of a separate bargaining unit comprised solely of the psychologists. Thus, for example, the record clearly establishes that the psychologists herein share a substantial community of interest with unit employees, that the psychologists perform diagnostic and counseling services which are similar to those performed by other unit employees, and that the work performed by the psychologists is highly integrated with the work performed by other unit classifications. In such circumstances, and based upon the entire record, the Commission concludes that, on

balance, the dissimilarities relied upon by the Petitioner, are outweighed by the above, and that, therefore, the petition should be dismissed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner