

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

- - - - -
In the Matter of the Petition of
WALWORTH INDEPENDENT TEACHERS 1/
Involving Certain Employees of
WALWORTH ELEMENTARY JOINT SCHOOL
DISTRICT NO. 1
- - - - -

Case II
No. 18789 ME-1153
Decision No. 13600

Appearances:

Ms. Carolyn M. Wessels, Petitioner, appearing on behalf of the
Walworth Independent Teachers.

Dr. Lee Siudinski, District Administrator, appearing on behalf
of the Municipal Employer.

Mr. Charles Gonzales, Executive Director, Southern Lakes United
Educators, appearing on behalf of the Intervenor.

DIRECTION OF ELECTION

Walworth Independent Teachers, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among certain employees of the above named Municipal Employer, and a hearing on such petition having been conducted at Elkhorn, Wisconsin, on March 11, 1975, by Kay Hutchison, Hearing Officer; and during the course of the hearing, Big Foot Elementary Education Association having been permitted to intervene in the instant proceeding on the basis of its claim that it is presently the voluntarily recognized collective bargaining representative of the employees involved herein; and the Commission having considered the evidence and being satisfied that a question has arisen concerning representation for certain employees of the Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

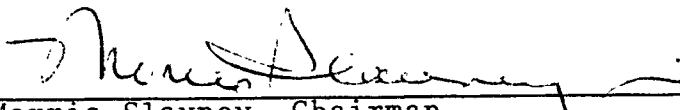
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time certified teachers employed by Walworth Elementary Joint School District No. 1, and all other employees, who, by April 16, 1975, had accepted their teaching contracts for the 1975-1976 school year, regardless of whether they are presently employed by said Municipal Employer, excluding supervisory and managerial employees, and further excluding such individuals as may prior to the election terminate their 1975-1976 employment contracts, or unless, prior to the election, their 1975-1976 contracts are terminated for cause by the Municipal Employer, to determine whether the majority of such employees desire to be represented by

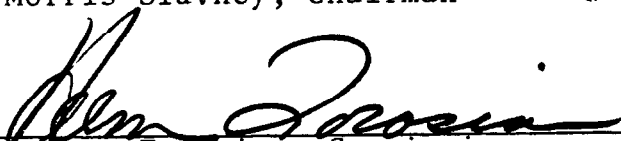
1/ The petition was filed by Carolyn M. Wessels on behalf of Walworth Independent Teachers and therefore the Commission deems that the petition has been filed by Walworth Independent Teachers.

Walworth Independent Teachers; or by Big Foot Elementary Education Association, SLUE, WEAC, NEA; or by neither of said organizations; for the purposes of conferences and negotiations with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

During the course of the hearing the Big Foot Elementary Education Association, hereinafter referred to as the Association, questioned the labor organization status of the Walworth Independent Teachers, hereinafter referred to as WIT, and also the Association contended that any election petition, and supporting showing of interest, could only be filed with the Commission, and hearing on the petition, could be conducted, only subsequent to April 15, 1975.

The Status of WIT as a Labor Organization

The Association asserted that WIT did not collect dues or function under a constitution and by-laws, and, therefore, the Association argues that WIT could not effectively represent employees in negotiations or in the processing of grievances.

During the course of the hearing Carolyn M. Wessels, who filed the petition on behalf of WIT, testified that the purpose of WIT was to collectively bargain with the School District on behalf of the certified teachers in its employ. There is no requirement that a labor organization have a constitution or by-laws, or that it admits employees to formal membership. There is no requirement that the nature of the participation be any more formal than desired by the employees themselves. 2/ The Commission is satisfied that WIT is a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act.

Timeliness of Petition and Showing of Interest

The Association contends that the petition should not be entertained and heard, nor the showing of interest determined, until after such time that the individual teacher contracts are renewed and when, in effect, the newly hired teachers have executed their individual teaching contracts, and, as a result, that the showing of interest should be determined by the Commission after, April 15, 1975, when the employment status of the teachers for the coming school year has been determined.

During the course of the hearing the School District's Administrator indicated that, to his knowledge, all teachers employed during the present school year will be re-employed during the 1975-1976 school year.

The Commission deems that the petition herein has been timely filed with respect to the existing agreement. Where there presently exists a recognized or certified bargaining representative, any petition for new election filed by either labor organization or employees must be accompanied by a showing of interest, signed and currently dated, by at least 30 percent of the employees in the existing unit, or in the unit desired by the petitioner. 3/ The Commission has administratively determined that the showing of interest filed herein was executed by at least 30 percent of the teachers in the employ of the School District on or about the date the petition was filed.

2/ Village of Grafton (12718) 5/74.

3/ Wauwatosa Board of Education (8300-A) 2/68 (Aff. Dane Co. Cir. Ct. 8/68).

The Association asserted that the Commission should determine the sufficiency of the showing of interest not on the basis of only the teachers in the employ of the instant School District, but on the total number of teachers in the employ of four additional school districts, on the claim that the Association represents the certified teachers of the five school districts, including the School District involved herein. The fact that the Association represents certified teachers in the employ of more than one school district does not establish such teachers in one bargaining unit. The appropriate unit herein consists of the teachers in the employ of the instant School District, and, therefore, the showing of interest has been computed on the number of teachers in the employ of the instant School District.

Eligibility to Participate in the Election

The Commission, in Ashland Joint School District No. 1 (7090-A) 5/65 and Appleton Joint School District No. 1 (7151) 5/65, has considered the statutory requirements affecting the issuance and acceptance of individual teaching contracts for the subsequent school year in the conduct of representation elections among certified teachers. In such instances, the Commission has held that the designation of the eligibility date subsequent to the statutory deadline for acceptance or rejection of a teaching contract for the next school year affords the full participation of the incumbents who will continue to be employed and thereby maintain an interest in the terms and conditions of employment. The Commission will also permit teachers, who have accepted teaching contracts for the ensuing school year, to participate in the election to be conducted prior to the close of the current school year. Teachers presently employed but who have not accepted 1975-1976 contracts will not be eligible to vote. In the event that there are any teachers in the eligible classifications set forth in the unit description who have not been employed by the District during the 1974-1975 school year, but who have been employed for the coming school year are also eligible and may present themselves at the polls and cast a ballot. However, the Commission will not provide mail ballots for the use of such employes.

Disputed Positions

Additional issues arose with regard to the inclusion in the unit of several positions in the collective bargaining unit and the eligibility of individuals occupying same.

Carolyn Calondro is employed in the District as a Title I teacher. All funds for the position are federally provided on a year to year basis. Ms. Colondro is compensated according to the negotiated salary schedule in effect. She receives the same fringe benefits and supervision as the other teachers employed in the District. Increased availability of federal funds during the 1974-1975 school year, enabled the expansion of the Title I position from part-time to full-time during the course of the year. Colondro is employed solely within the Walworth Elementary Joint School District No. 1.

The Commission has held that the fact that salaries of certain positions are furnished by state or federal funds does not provide a basis for their exclusion from units consisting of employes whose salaries are from the funds of the school district. 4/ Colondro performs the same unit work and is employed under the same terms and conditions of employment as the locally funded elementary teachers in the District. Therefore, position of Title I teacher, presently occupied by Carolyn Colondro, is appropriately included in the collective bargaining unit.

4/ Milwaukee Board of School Directors (9000) 4/69, Tomah School Dist. No. 1 (8209-C) 3/72, Adams-Friendship Area Schools (11881) 5/73.

Disputes arose with regard to the inclusion of five positions and their incumbents as follows: Band Director (Franklin Bartlett), Nurse (Charlotte Kevin), Speech Teacher (Kathy Kelley), Learning Disabilities Teacher (Pat Schmidt) and Psychologist (Charles Clark). The incumbents of the five positions perform their duties for varying amounts of time within five cooperating elementary school districts and a union high school which constitute the Big Foot Area Schools Association. The Association functions under the directives of Section 666.30 of the Wisconsin Statutes. Individual employment contracts are issued through the Association. The incumbents are compensated according to a separate salary schedule which has been established by the Big Foot Area Schools Association.

The Association, contrary to the WIT and the School District averred that the positions occupied by Jack Schroeder and Cathleen Dickie are supervisory and should accordingly be excluded from the collective bargaining unit.

The Commission is satisfied that the five positions in dispute are appropriately excluded from the collective bargaining herein on the basis that their employment relationship is with the Big Foot Area Schools Association and not with the Walworth Elementary Joint School District No. 1.

John Schroeder is employed by the District as a full-time mathematics teacher. During the absence of the District Administrator, Mr. Schroeder occupies the Administrator's office and is in charge of pupil supervision. At such times, Schroeder does not have access to employe personnel files, nor does he exercise supervisory authority over the teaching staff. On such occasions, Schroeder's administrative responsibilities consist of student discipline and student health and safety. Mr. Schroeder is not compensated for his extra duties. A substitute teacher assumes Schroeder's classes while the latter fills in for the Administrator.

Section 111.70(o)1 of the Municipal Employment Relations Act provides that a supervisor is

"... any individual who has the authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

During Schroeder's occasional filling in for the District Administrator, he does not exercise or possess supervisory authority over other employes. Therefore, we have concluded that the position occupied by John Schroeder is appropriately included in the collective bargaining unit.

Cathleen Dickie is employed by the District as a third grade teacher. The Association claims that Dickie possesses supervisory authority as a result of personal influence with the District's Board of Education.

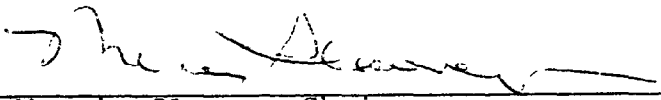
The record discloses that Dickie has been instrumental in the development of team teaching within the district and has assisted other teachers in the procurement of teaching supplies outside of the Association and Board formal bargaining relationship. The Association

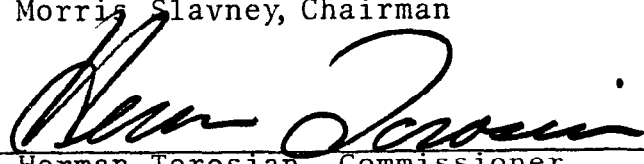
No. 13600

has failed to offer any substantive evidence relevant to the statutory criteria cited above to establish that Dickie is a supervisor within the meaning of the Act. Accordingly, the Commission finds the position of Cathleen Dickie to be appropriately included in the collective bargaining unit herein.

Dated at Madison, Wisconsin, this 1st day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner

No. 13600