

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of  
COCHRANE-FOUNTAIN CITY EDUCATION  
ASSOCIATION  
Involving Certain Employees of  
COCHRANE-FOUNTAIN CITY COMMUNITY  
JOINT SCHOOL DISTRICT NO. 1  
-----

Case II  
No. 19087 ME-1188  
Decision No. 13700

Appearances:

Mr. James C. Bertram, Executive Director, Coulee Region United  
Educators, for the Petitioner.  
Mr. John Schick, District Administrator, for the Municipal Employer.

DIRECTION OF ELECTION

Cochrane-Fountain City Education Association, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act among certain employees of the Cochrane-Fountain City Community Joint School District No. 1; and hearing on said petition having been conducted at Fountain City, Wisconsin, on May 20, 1975, Hearing Officer Robert M. McCormick being present; <sup>1/</sup> and the Commission having considered the evidence and being satisfied that a question of representation has arisen concerning a certain employee of the Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in a residual bargaining unit consisting of the unrepresented professional employees employed by Cochrane-Fountain City Community Joint School District No. 1, excluding managerial and supervisory personnel, per diem employees, teaching personnel and all other employees of the Municipal Employer, who were employed on May 20, 1975, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining

---

<sup>1/</sup> The hearing was cassette-tape recorded and not transcribed. Both parties waived the provisions of Section 227.12 of the Wisconsin Statutes, thereby permitting the Commission to issue its Direction of Election after an examination of the Hearing Officer's summary of testimony and documentary evidence submitted, without resort to a fully transcribed record, or transmittal to the parties of said summary.

whether a majority of such employees desire to be represented by Cochrane-Fountain City Education Association for the purposes of collective bargaining with the Cochrane-Fountain City Community Joint School District No. 1 on questions of wages, hours and conditions of employment.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 24<sup>th</sup>  
day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Petitioner in the instant petition filed on April 22, 1975, seeks a representation election in a residual unit of professional employees who currently are unrepresented. At outset of hearing the Petitioner and the Municipal Employer stipulated that there existed an overall professional unit, voluntarily recognized, which was described in the parties' current 1975-1976 master agreement, in material part, as follows:

"ARTICLE I - RECOGNITION

. . . all the teaching personnel, but excluding therefrom the Superintendent, Assistant Superintendents, Principal, Assistant Principals, any other supervisory personnel, and persons employed on a per diem basis.

. . ."

The record discloses that the professional registered nurse comprises the residual unit of "unrepresented professionals", not included in the unit of teachers. Both parties agree that there exists no bar to the conduct of a representation election for the one professional eligible in such a residual unit. The evidence would similarly support the conduct of such an election even though the parties had excluded professionals who were not "teaching personnel" from the unit description in their current master agreement. 2/

The only issue raised at hearing involves the disposition by the Commission of the separate unit of one professional nurse vis-a-vis possible merger of said unit with the overall unit of teachers in the event the registered nurse selects the Petitioner as her bargaining representative. In that context, the Petitioner requests that the Commission merge the separate unit of registered nurse with the contractually recognized unit of teaching personnel in accordance with the Commission's decision rendered in the cases, City of Milwaukee (WERC 13099, 10/74) and the dicta set forth in Fox Valley Technical Institute District No. 12 (WERC 13204, 12/74). The Petitioner cites the "anti-fragmentation" proviso contained in Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act (MERA) in support of its contention, that if it is selected as exclusive bargaining representative for the registered nurse, a logical result would call for the merger of the teachers' unit and the registered nurse to avoid multiplicity of units in a small district. The Petitioner indicated for the record that it was prepared to waive the chance to bargain on behalf of the nurse for wages and benefits for the 1975-1976 school year in the event the nurse selects the Petitioner as bargaining representative, and if the Commission merges the two units, since it and the Municipal Employer have already negotiated a 1975-1976 master agreement covering teachers.

---

2/ The fact situation here falling outside the rule of the case in City of Cudahy (12997) 9/74, where the Commission adopted the general rule that it would dismiss an election petition and/or decline clarification of a voluntarily recognized unit, where a petitioner seeks to represent employe(s) occupying positions which were excluded in the contractual recognition clause, and which positions otherwise do not constitute all of the remaining unrepresented employees as a residual unit.

The District opposes the Commission's merging the registered nurse with the teaching personnel in the contractually recognized unit under the circumstances recited above. It points to the experience of other school districts in the West Central part of the State where registered nurses have not been included in certified or voluntarily recognized units of teaching professionals. The District avers that the nurse has no assigned teaching duties, but at most assists a responsible classroom teacher, as an invited participant, in areas such as family living and health occupation classes. The District relies upon a 1965 Commission decision in support of "separateness," namely Elmbrook School District (7361), 11/65, where the Commission excluded all registered nurses from an overall unit of "certificated teaching personnel" except two teaching nurses who taught students at least 50 percent of the time, and who in fact, possessed teaching certificates.

The record discloses that the registered nurse, Ruth Scharmota, provides the District with emergency nursing services, conducts physical examinations, immunizations and tests for hearing and vision. She is primarily responsible to the District Administrator; and secondarily responsible to the elementary and secondary school principals when involved with parochial health problems or needs of students in those respective systems. The nurse does not engage in teaching as such, but does function as a specialist and resource aide, under the direction of classroom teachers, in the health occupation and family living classes. In accordance with Section 115.80(3) of the Wisconsin Statutes (Laws of 1973, Chapter 89), the District has appointed the registered nurse as a member of the Multi-disciplinary Team to deal with matters of health and with children with exceptional educational needs. Other professionals who are included in the overall unit of teachers but who are not completely engaged in classroom teaching are the special education teachers. The psychologist is not an employe of the District, but employed on a contract-for-time basis from CESA District 11, LaCrosse.

The salary of the nurse has been determined independently from other non-professional classified employes by the District and without reference to the teacher salary schedule. However, the District granted the nurse an 11-1/2 percent raise for 1975-1976 over and above her 1974-1975 salary as described in her individual contract, as were the teachers. The nurse received \$8,100 for a 185-day contract year in 1974-1975 and will receive \$9,032.62 for a comparable term in 1975-1976. The difference in the length of contract year for the nurse (185 days) vis-a-vis the teachers (190 days) is explained by two (2) paid convention days and three (3) paid holidays for the teachers. Similarly, the length and start of a normal school day, 8:00 a.m. to 4:00 p.m., is common to both groups.

The Commission is satisfied that there is some community of interest between the nurse and teachers when she functions as a member of the Multi-disciplinary Team in dealing with children with exceptional education needs, a function supportive of the total educational program. The Commission concludes that she also performs such a supportive role when assisting in the instruction of students in the family living and health occupation classes. 3/ The Elmbrook decision, supra, cited by the District was decided under the old Statute, prior to the advent of the "anti-fragmentation" proviso contained in Section 111.70(4)(d)2.a. (MERA). The Commission is convinced that the parties would not be overburdened in their bargaining in the future if the registered nurse were to be placed in the overall unit because such a co-mingling of professional groups does not prevent separate treatment by classification to meet special working conditions, just as education-bargainers now operate in dealing with salaries and conditions for psychologists, guidance counselors, librarians and athletic directors.

---

3/ Janesville Board of Education, (6678) 3/64.

Therefore, the Commission directs that if the registered nurse selects the Petitioner as her bargaining representative the residual unit of the professional registered nurse shall be merged with the overall unit of teaching personnel. 4/ However, the terms of the 1975-1976 master agreement covering teaching personnel are not automatically to be applied to the registered nurse unless collective bargaining produces such a result.

Dated at Madison, Wisconsin, this 4<sup>th</sup> day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Howard S. Bellman*  
Howard S. Bellman, Commissioner

---

4/ Fox Valley Technical Institute District No. 12 (WERC 13204, 12/74);  
City of Milwaukee (WERC 13099, 10/74).