

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Involving Certain Employees of
BURLINGTON AREA SCHOOL DISTRICT

Case V
No. 18851 AE-1159
Decision No. 13702

Burlington Educational Secretaries Association having requested the Wisconsin Employment Relations Commission, herein Commission, to determine whether the position of Title I Aide should be included in, or excluded from, the certified collective bargaining unit consisting of:

and hearing having been held in the matter on February 19, 1975 at Burlington, Wisconsin, before hearing Officer Amedeo Greco; and both parties having filed briefs by April 2, 1975; and the Commission having considered the evidence and arguments of Counsel, and being fully advised in the premises, makes and issues the following

That the position of Title I Aide shall be included in the above-stated collective bargaining unit and that such unit will be clarified to read:

Given under our hands and seal at the
City of Madison, Wisconsin, this 5th
day of June, 1975.

By Thomas Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

Pursuant to a petition filed on July 16, 1974 1/ by the Burlington Educational Secretaries Association, hereinafter Association, the Commission on August 16 directed an election in a unit consisting of:

"All regular full-time and regular part-time clerical employees employed by Burlington Area School District, Burlington, Wisconsin, including Secretary I and II, Clerk I and II and Aide, but excluding Administrative Secretary I and II, all teaching personnel, supervisors, confidential employees, municipal employees and all other employees."

Of the approximately 28 employees eligible to vote, 25 cast ballots, 19 of which were in favor of representation by the Association, and 6 against. Subsequently, on September 20, the Commission certified that the Association was the exclusive representative of the employees in the above-described unit. Employees classified as Aides were not listed on the election eligibility list and did not vote in the election.

Later, following the commencement of collective bargaining negotiations between the parties, a dispute arose as to whether employees classified as Title I Aides were encompassed in the certified unit, with the Association contending, contrary to the District, that they should be included in the unit. Being unable to resolve this matter, the Association subsequently filed the petition 2/ herein, wherein it requested that the Title I Aides be included in the certified unit. The District, on the other hand, opposes the inclusion of the Title I Aides, contending that said employees lack a sufficient community of interest with the unit employees. The Employer alternatively contends that if it is found that Title I Aides do share a community of interest, that the Title I Aides be given the opportunity to vote in an election to determine whether they desire to be included in the certified unit.

In support of its position, the District relies on a number of factors which show some dissimilarities between the Title I Aides and unit employees. Thus, for example, the District points out that whereas Title I Aides perform instructional duties, the unit employees primarily perform clerical functions, which do not necessitate close student contact. Further, the District notes that there is "little, if any integration or interchange between work performed by Title I Aides and that performed by other clerical and aide employees". The District also points out that, unlike unit employees, Title I Aides can discipline students and have their salaries funded by the federal government. Because of this latter fact, the District stresses that it is not completely free to assign work to Title I Aides, since Title I guidelines require that Title I Aides work solely and exclusively with children in the Title I program. Additionally, the record discloses that the Title I Aides have a separate supervisor and that, whereas unit employees generally work from approximately 8:00 a.m. to 4:30 p.m. with a half hour lunch break, Title I Aides work from about 8:30 a.m. to 3:00 p.m. with one hour off for lunch.

1/ All dates hereinafter refer to 1974.

2/ At the hearing, both parties agreed that the Union's oral request for clarification of the unit constituted a valid petition.

The foregoing factors, however, are counterbalanced by other record facts which support the Association's view that the Title I Aides have a substantial community of interest with the unit employees. The Title I Aides spend approximately thirty percent of their time performing the same kind of clerical functions which are performed by some unit employees. Additionally, the Title I Aides and other aides in the unit (i.e., teacher aides, health aides, library aides, and audio-visual aides) all basically perform supportive type services to the professional staff. Further, like unit employees, Title I Aides are not required to have any formalized training or expertise as prerequisite for their job. Moreover, the Title I Aides and unit employees are all paid on an hourly basis and basically receive the same employee benefits.

As to the source of funding, it should be noted that although the Title I positions are federally funded, that factor, standing alone, is insufficient to warrant the exclusion of said employees. For, as noted in Janesville Joint School District No. 1, 3/:

"The Commission has held that mere funding of employee wages by another unit of government is not a sufficient basis for the exclusion of said employees from a collective bargaining unit."

Based upon the latter factors, the Commission finds that, despite the differences noted by the District, the record establishes that the Title I Aides do share a sufficient community of interest to warrant their inclusion in the certified unit. In so finding, the Commission notes that it is directed under Section 111.70(4)(d)2 of the Municipal Employment Relations Act to avoid fragmented bargaining units whenever possible. Here, if the District's position were to be sustained, approximately four Title I Aides would constitute a separate bargaining unit, despite the fact that the certified unit already contains a number of other aide positions. Since such a result would be contrary to the statutorily mandated anti-fragmentation policy, and inasmuch as it would ignore the commonality of interest between the Title I Aides and the other employees in the unit, the Commission concludes that such a separate unit would be inappropriate. Accordingly, the Commission finds, pursuant to its well established policy 4/, that the Title I Aides do share a sufficient community of interest to be included in the certified unit.

In so finding, the Commission is aware that the Title I Aide positions were in existence at the time of the election and that they did not participate in the election. However, the Association representative in the prior representation proceeding was unaware of the status of the Title I Aides and therefore, on that basis, raised no objection to their exclusion from the eligibility list. In these circumstances, where the excluded employees share a sufficient community of interest to warrant their inclusion in the certified unit, and where the Commission would have initially included them in one unit had the question been presented to the Commission prior to the

3/ Decision No. 13617 (5/75).


4/ See Tomah Joint School District No. 1 (8209-C) 3/72; Menasha Joint School District No. 1 (11932) 6/73; and Hortonville Joint School District No. 1, (11255) 8/72.

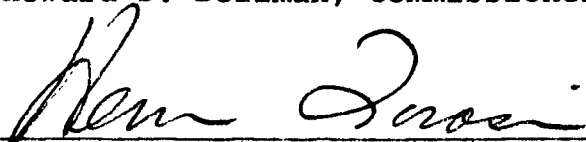
Direction of Election, and where there is no evidence that both parties intended to exclude the positions at the time of the election, the Commission finds, based upon the facts here presented, that the Title I Aides should be, and are hereby, included in the certified unit without an election, and that the unit should be, and here is, clarified accordingly.

Dated at Madison, Wisconsin, this 5th day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner