

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of  
MADISON TEACHERS, INC.  
For Clarification of a Collective  
Bargaining Unit Consisting of Certain  
Employees of  
JOINT SCHOOL DISTRICT NO. 8, CITY OF  
MADISON, ET. AL.

Case XXI  
No. 17716 ME-1036  
Decision No. 13734-B

In the Matter of the Petition of  
JOINT SCHOOL DISTRICT NO. 8, CITY OF  
MADISON, ET. AL.  
For Clarification of a Collective  
Bargaining Unit Consisting of Certain  
Employees of  
JOINT SCHOOL DISTRICT NO. 8, CITY OF  
MADISON, ET. AL.

Case XXXIV  
No. 19272 ME-1209  
Decision No. 13781-A

ORDER CLARIFYING BARGAINING UNIT

The Wisconsin Employment Relations Commission having, on October 31, 1974, issued a Certification of Representatives in Case XXI, captioned above, wherein it certified that Madison Teachers, Inc. had been selected as the exclusive collective bargaining representative of certain employees of Joint School District No. 8, City of Madison, et. al., in the collective bargaining unit consisting of all regularly employed substitute per diem teachers (excluding all other employees and supervisors), who are listed on the list of substitute per diem teachers as of June 4, 1974, and who have taught at least thirty (30) or more days in the one-year period immediately preceding said date; and Madison Teachers, Inc. having, on June 6, 1975, filed a petition with the Commission requesting that the Commission clarify the same bargaining unit as to the scope thereof; and the Commission having, on June 19, 1975 ordered hearing on such petition, and Joint School District No. 8, City of Madison, et. al., having, on June 20, 1975, filed a petition with the Commission requesting that the Commission clarify the same bargaining unit as to the scope thereof and as to the same issue raised in the petition filed by Madison Teachers, Inc.; and the Commission having, on July 1, 1975, ordered the matters consolidated; and hearing having been held in the matters at Madison, Wisconsin, on July 9, 1975, Harvin L. Schurke, Hearing Officer, being present; and the Commission having considered the evidence and arguments, and being satisfied that an Order should be issued clarifying the aforesaid bargaining unit,

NOW, THEREFORE, it is

ORDERED

That per diem substitute teachers employed by Joint School District No. 8, City of Madison, et. al. who have taught less than thirty (30) days in the immediately preceding one-year period are not considered to

NO. 13734-B  
NO. 13781-A

be regular employes of said Municipal Employer and are excluded from the collective bargaining unit consisting of all regularly employed per diem substitute teachers (excluding all other employes and supervisors) employed by Joint School District No. 8, City of Madison, et. al.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

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

*Herman Korosian*  
Herman Korosian, Commissioner

MADISON JOINT SCHOOL DISTRICT NO. 8, XXI, Decision No. 13734-B  
MADISON JOINT SCHOOL DISTRICT NO. 8, XXXIV, Decision No. 13781-A

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

Case XXI was initiated on March 6, 1974, when Madison Teachers, Inc. filed a petition with the Commission requesting a representation election in a claimed appropriate unit consisting of "all regularly employed substitute per diem teachers - those who have taught at least 20 or more days in the one year preceding the date of this petition (March 6, 1974)". A hearing was held on the petition on May 16, 1974, and on June 3, 1974 the Commission issued a Direction of Election with accompanying Memorandum. In that Memorandum, the Commission stated:

"The parties stipulated to the conduct of an election among the regularly employed per diem substitute teachers and agreed that employes eligible to vote herein would be those per diem substitutes who had been employed by Madison Board of Education thirty (30) days or more within the 1973-74 school year (one-year period prior to June 4, 1974)."

The unit in which the election was to be conducted was stated in the Direction of Election as follows.

"all regularly employed substitute per diem teachers (excluding all other employes and supervisors), who are listed on the list of substitute per diem teachers as of June 4, 1974, and who have taught at least thirty (30) or more days in the one-year period immediately preceding said date".

An election was conducted by mail ballot and, after a count of the ballots held on October 7, 1974, Madison Teachers, Inc. was certified as the exclusive collective bargaining representative in the unit.

PETITION AND POSITION OF MADISON TEACHERS, INC.:

On June 6, 1975, Madison Teachers, Inc. (MTI) filed a petition with the Commission for clarification of the substitute teacher bargaining unit wherein, after recitation of the circumstances which preceded the issuance of the Certification of Representatives, MTI asserts that, by virtue of the election, it is the representative for all regularly employed substitute per diem teachers employed by the Municipal Employer. MTI alleges that the references in the Direction of Election and Certification of Representatives to teaching 30 days or more within the 1973-74 school year were placed therein to establish eligibility to vote in the election, and not to limit or describe the bargaining unit itself. At the hearing, MTI relied on the decision of the Commission in Milwaukee Board of School Directors (8901) 2/69, aff.: Dane Co. Cir. Ct., 6/70, and reiterated its claim that the "30 day rule" enunciated in the Milwaukee case was applied in Madison, Case XXI, as a rule of eligibility for participation in the election rather than as a description of the bargaining unit. MTI asserted that there has never been any question in Milwaukee that the certified representative was the representative of all regularly employed per diem teachers, while indicating that it understood the effect of the Municipal Employer's arguments here to be a bargaining unit limited in size by the list which existed on the date specified in the Direction of Election and which would predictably diminish in size as individuals left the unit after that date. Upon the filing of MTI's petition, the Commission reopened the original representation proceedings for further proceedings in Case XXI.

PETITION AND POSITION OF THE MUNICIPAL EMPLOYER:

On June 20, 1975, Joint School District No. 8, City of Madison, et. al., filed a petition with the Commission for clarification of the

substitute teacher bargaining unit wherein, after recitation of the background facts, it also indicated that a dispute exists as to the scope of the substitute teacher bargaining unit. Relying on the "regularly employed" language of the Direction of Election and Certification of Representatives, the District contends that the Commission went on to define (by the use of the 30 day rule) what regularly employed substitutes are, and that MFI now seeks a different unit consisting of "all substitutes". The District contends that its understanding of the scope of the unit is supported by the statements made by MFI in letters sent to eligible voters in the election shortly after the election was held. The Municipal Employer indicated during the hearing herein that it viewed the unit as open-ended, as a new employe or one who had been ineligible to vote in the election conducted by the Commission would automatically be included in the unit upon the completion of 30 days worked for the Municipal Employer. The petition filed by the Municipal Employer was initially docketed separately as Case XXXIV, but was then consolidated with the reopened proceedings in Case XXI.

#### DISCUSSION.

In Milwaukee, the Commission faced issues concerning whether the substitute per diem teachers were independent contractors and whether the substitute per diem teachers were a separate division of the Municipal Employer so as to warrant the creation of a separate bargaining unit. The Commission then reached the question of "which substitute per diem teachers shall be entitled to vote in the election", which focused attention on the distinction between "casual" and "regular" employes. After noting that some of those on the substitute list worked practically full time, while others worked few, if any, days, the Commission indicated that it considered those in the latter group to be "casual employes" and moved on to the problem of defining the point at which an individual ceases to be a casual employe and attains status as a regular employe. The Commission rejected the contention of the Municipal Employer in said case that all substitute per diem teachers were casual employes, and developed the 30 day rule, concluding with the following statement:

"With the above discussion in mind, we conclude that substitute per diem teachers will be considered 'regular employes' and eligible to vote if they are listed on the Municipal Employer's list of substitute per diem teachers as of the date of this direction and if they have taught at least 30 or more days in the one-year period immediately preceding the date of this direction." [Milwaukee Board of School Directors (3901) 2/69 at pages 7 and 8, emphasis by underscoring added].

It is evident from the positions of the parties and from the evidence that the stipulation of the parties for an election in the instant proceedings was made in light of the decision of the Commission in Milwaukee, and it is noted that the unit claimed appropriate by MFI in its petition was amended to reflect language almost identical to the unit in which the election was directed in Milwaukee. We note that the unit claimed appropriate by MFI in its original petition in Case XXI was limited to those who had taught a specified number days in the preceding year and that the correspondence issued by MFI following the election in Case XXI continued to use a days worked limitation in the description of the bargaining unit, both of which are inconsistent with MFI's present claim that it has always sought to represent "all" substitute teachers employed by the Municipal Employer and always regarded a days' worked test as a rule of eligibility rather than as a description of the unit.

We deem the position taken by the Municipal Employer to more accurately reflect the stated and intended meaning of the Commission in the Direction of Election and the Certification of Representatives. The position of MFI would ignore the distinction between regular and casual employes which was raised and decided in Milwaukee. Individuals who have not taught

thirty (30) or more days in the immediately preceding one-year period 1/ are regarded as casual employes and are therefore not within the unit described as "all regularly employed substitute per diem teachers".

As noted above, some question has arisen concerning the identification, after June 4, 1974, of the members of the bargaining unit. The initial determination of "regular" employment was made at the conclusion of the 1973-74 school year on the basis of work performed during that school year, resulting in the identification of the class of individuals to be considered as unit employes at the outset of the 1974-75 school year. The Municipal Employer is correct in its understanding that the status of an individual changes to that of a regular employe upon the completion, at any time, of the requisite thirty (30) days taught in any one-year period, thereby automatically including such an individual in the instant bargaining unit for the remainder of that school year. It is suggested that an annual re-determination of regularity in employment, made at the close of each school year, would serve the purpose of identifying the carry-over members of the bargaining unit for the following school year.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

German Torosian  
German Torosian, Commissioner

---

1/ The "one year period" referred to herein is any 365 consecutive days, not a calendar year or school year.