

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case IV
No. 19235 ME-1206
Decision No. 13804-A

Mr. Wayne Schwartzman, Staff Counsel, Wisconsin Education Association Council, on behalf of the Petitioner.
Gaylord, Bye & Rodli, S.C., Attorneys at Law, by Mr. Keith D. Rodli, on behalf of the Municipal Employer.

West Cental Education Association - River Falls hereinafter the Petitioner, having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct a representation election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act among certain professional employes of River Falls Joint School District No. 1, hereinafter the Municipal Employer, to determine whether said employes desire to be represented by said petitioner for the purposes of collective bargaining; and prior to hearing on such petition the Commission on July 15, 1975 having denied a motion of the Municipal Employer that hearing in the instant matter be suspended pending Commission decision on an election petition and prohibited practice complaint (Case I, No. 17544, ME-1015 Decision No. 12688, and Case II No. 17983 MP-367 Decision No. 12375-B); and hearing in the matter having been first conducted on July 16, 1975 at River Falls, Wisconsin after which the Commission having received no transcript by March 23, 1976, did schedule a hearing de novo in the matter after timely notice, which was held on May 5, 1976 at Ellsworth, Wisconsin, Robert M. McCormick, Hearing Officer, being present for the Commission; and the Commission after having examined the transcript of record and considered the evidence, arguments and brief of the parties and being satisfied that a question has arisen concerning representation for all of the professional employes of said Municipal Employer;

DIRECTED


That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all full-time and all regular part-time professional employees employed by River Falls Joint School District No. 1, including but not limited to, guidance counselors, reading coordinator, school psychologist, teacher of the hearing impaired and school nurses, but excluding administrators and supervisory personnel, teacher aides, and clerical employees, who were employed by said Municipal Employer on May 5, 1976, 1/ except such employees as may prior to the election

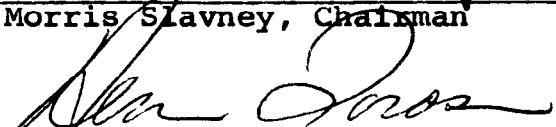
1/ Pursuant to the stipulation of the parties at hearing, the incumbent in the position of teacher of the Hearing Impaired Deaf and Hard of Hearing, who was employed after said date is eligible to vote.

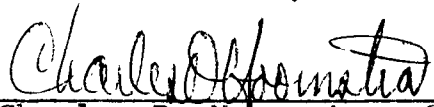
quit their employment or be discharged for cause, for the purpose of determining whether such employes desire to be represented by West Central Education Association - River Falls for the purpose of collective bargaining with the Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 8th
day of October, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hohnstra, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Petitioner on January 10, 1974 filed a petition for an election to accrete all regular part-time teaching employes to a voluntarily recognized unit of "full-time teaching employes" as described in its then existing collective bargaining agreement. Hearing was held on said petition after which the Commission, on May 9, 1974, issued a direction of election in said matter. 2/ The Commission however held said election in abeyance pending the resolution of a prohibited practice complaint 3/ filed by Petitioner and certain employes wherein the School District was named as Respondent.

Thereafter and prior to any further action by the Commission concerning the matter, the Petitioner on June 6, 1975 filed a written request to withdraw its petition for election and in its place filed the instant petition for an election in an over-all unit of professionals, including the part-time teachers. The Municipal Employer sought to delay disposition of the instant petition until the Commission disposed of the previous election petition affecting part-time teachers and its review of the Examiner's decision in the complaint proceeding, which decision could affect the reinstatement of part-time teachers. The Commission denied said motion, by Order dated July 15, 1975 4/, and confirmed the hearing date previously scheduled for July 16, 1975. Hearing was held as scheduled on July 16, 1975.

On March 26, 1976, after the initial hearing on the instant petition, the Commission issued its decision in the prohibited practice proceeding 5/ and shortly thereafter on April 14, 1976 issued its Order Setting Aside the Direction of Election and dismissed the initial petition affecting part-time teachers. 6/

On May 5, 1976 a second hearing de novo was conducted on the instant petition, because of the Commission's inability to obtain a transcript of the first hearing from an outside reporter, and because of the requirement of the Administrative Procedure Act, (1973), Wis. Rev. Stats., Section 227.12. The parties were thereafter given opportunity to file briefs on May 18, 1976 and the Municipal Employer filed a brief. On September 8, 1976, the Commission received a transcript of the proceedings which the Commission has read prior to issuing this direction.

The claimed appropriate bargaining unit set forth in Petitioner's petition consists of all full-time and regular part-time professional employes . . . but excluding clericals, administrative and supervisory personnel. At time of filing same, a voluntarily recognized unit was contained in the parties' then existing collective bargaining agreement, which consists of: "all full-time employes . . . engaged in teaching, including classroom teachers and librarians, but excludes nurses, guidance counselors, principals, supervisors and other administrative personnel. The overall professional unit claimed appropriate by the Petitioner would in effect expand the contractually recognized unit to cover guidance counselors, reading coordinator, school nurses

2/ Decision No. 12688.

3/ Decision No. 12754-A.

4/ Decision No. 13804.

5/ Decision No. 12754-B.

6/ Decision No. 12688-A.

teacher of the hearing impaired and psychologist. In the course of hearing the Municipal Employer stipulated that guidance counselors and teachers of the hearing impaired should properly be included in an appropriate unit of professionals.

The District initially contended that regular part-time teachers, though professional employees, had no community of interest with full-time professional employees and opposed their inclusion in an overall unit. At close of hearing the District withdrew said position. The Commission will therefore include as eligibles the seven named part-time teachers.

There are disputes over whether four positions should be excluded from an overall unit of teaching professionals, the District contending that the school nurse positions, occupied by Darlene Hlidek and Barbara McLaughlin, should be excluded because of the lack of a community of interest with teaching personnel; and the teacher aide, Jean Koslowitz, who works with the teacher of the Trainable Mentally Retarded (TMR), should be excluded, as other aides are now excluded by practice from the contractually recognized unit. The Petitioner contends that Koslowitz is certified and functions as a professional teacher of TMR, and should be included as an eligible in an appropriate unit; and that school nurses, psychologist and reading coordinator should be included.

The District contends that two other individuals, Patricia Soderberg and Anne Anderson, occupying the positions, School Psychologist and Reading Coordinator, respectively, should not be considered as eligible because they function as supervisors. The District also argues that the Psychologist has no community of interest with the teaching professionals.

The record discloses that though the existing collective bargaining agreement does not specifically exclude teacher aides, the parties agree that aides have been excluded by practice. The Commission shall reflect such general exclusion in the description of the appropriate unit in this Directive.

Supervisory Status: Reading Coordinator and School Psychologist

The District contends that Mrs. Anne Anderson, Reading Coordinator and Patricia Soderberg, School Psychologist should be excluded from the eligibles because of their supervisory functions, relying in the former instance on Milwaukee Board of School Directors, (13787) 7/75, because Anderson has little direct student contact in a classroom teaching situation. The Association, on the other hand, opposes their exclusion, contending that both positions reflect the incumbents assisting teachers in support of the total educational program, with Anderson only exhibiting incidental direction over the six Title I teacher-aides.

Section 111.70(1)(0) of MERA defines the term "supervisor" as follows:

"As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, 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."

In concluding whether an individual is a supervisor, the Commission, in order to determine whether the statutory criteria are present in

sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees. 7/

In agreement with the Petitioner, the Commission finds that the Reading Coordinator is not a supervisor and therefore is included with the unit and eligible to vote.

The record discloses that Mrs. Anderson, who is certified by the DPI as a Reading Specialist, primarily functions in that capacity. Anderson prepares the resource materials and assists the classroom teacher in the grouping of pupils at various reading levels. She also assists the classroom teacher in monitoring teacher aides, which have been assigned by Anderson, at the teacher's request, to work with high risk children. The classroom teacher, rather than Anderson, evaluates the aide's performance in the classroom. Anderson reports to the Coordinator of Curriculum, who in turn reports to the Superintendent. Anderson exercises no direction or control over any other professional employee, and spends 70 percent of her time in testing pupils. She works with the classroom teacher in the interpretation of test results. Anderson serves on the Multi-Disciplinary Team. ("M-Team") established under Section 115.80(3) of the Wisconsin Statutes (Laws of 1973, Chapter 89) in working with children with exceptional education needs, when a reading problem surfaces. Other professionals serve with Anderson on the "M-Team", including school nurse, guidance counselor, speech correctionist, psychologist and school principal.

The record fails to show that the Reading Coordinator has the right to hire, discharge, discipline or promote any teacher or teacher aide, or to effectively recommend the same, except that she did effectively recommend the hire of two Title I aides. Anderson also exercises some coordination over some twelve District Funded Aides, where each may be utilized in the reading specialties.

Unlike Milwaukee Board of School Directors, 8/ a case relied upon by the District, the Reading Coordinator here does not

7/ St. Croix County, Decision No. 14518, 4/76; Fond du Lac County (10579-A) 1/72.

8/ Decision No. 13787, (7/75).

exercise sufficient direction and control over other professionals, (i.e., reading specialists) to warrant her exclusion as supervisory. Anderson's work with Title I aides constitutes the exercise of her professional skill as a certified Reading Specialist and the supervision of a program rather than individuals.

Patricia Soderberg, certified by the DPI as a School Psychologist, functions some 70 percent of the time in said capacity, and acts as a guidance counselor for much of the remaining portion of her time. Her duties primarily consist of directing the program for psychological testing in order to ascertain the personality problems of students and "pre-schoolers", their behavioral problems and to discover certain learning problems. Soderberg reports to the Director of Pupil Services, who in turn, reports to the Superintendent. She, secondarily is responsible to her school principal. Other professionals report to the Director of Pupil Services, including guidance counselors, school nurses and the learning disabilities teacher. Soderberg serves on the "M-Team", is largely responsible for the staffing of that team, and serves as liaison with outside referral agencies.

The record discloses that Soderberg exercises no direction or control over any other employees of the District. While Soderberg did evaluate a CESA #5 school psychologist, during the 1974-75 school year, she only did so at the request of DPI and because said psychologist was interning for eventual Level II Certification as a school psychologist. The following school year, 1975-76, the District employed a certified Level II school psychologist for 30% of his time. Since said psychologist was certified at Level II Soderberg was not requested by either District or DPI to evaluate his performance. The only incidental supervisory duty which Soderberg carries out involves replacing the building principal one to two times per month, which function does not involve the processing of teacher grievances, nor the handling of pupil discipline. Thus, the Commission concludes that the school psychologist is not a supervisory position.

Community of Interest Between School Nurses and Psychologist With Other Teaching Professionals

In addition to the supervisory issue raised by the District with regard to the school psychologist, it further argues that said position should be excluded from an overall unit of professionals because of the claimed lack of a community of interest. This same contention affects school nurses. The record indicates that Darlene Hlidek, Health Coordinator, and Barbara McLaughlin both function as school nurses. The former occupies a 100 percent position, under a two hundred day individual employment contract, servicing the health needs at Greenwood Elementary and the Senior High Schools; and the latter occupies a 75 percent position over 190 days, spending most of her time at the West Side Elementary and Junior High Schools. Both individuals provide emergency nursing services at their respective schools and assist in training staff to administer a First-Aid Program. Both of the school nurses spend about 50 percent of their time in health education and in assessing the health needs of the pupils and they both act as resource personnel in assisting classroom teachers as guest lecturers in health education. The nurses are licensed by the State of Wisconsin Division of Nurses of Department Regulation and Licensing. Additionally, Hlidek is certified by the DPI in 1-8 elementary and K-12 education, but such certification is not required for the school nurse position.

The record discloses that the school nurses serve on the "M-Team" provided under Section 115.08(3) of the statutes and confer with parents, doctors and proper outside agencies with regard to the health status of pupils. Hlidek, as Health Coordinator, has the

added responsibilities for preparation of the health budget and for the health program of staff personnel of the District.

The Commission, in a decision involving a representation election for a residual unit of professional school nurses, directed that the nurses be attached to an overall unit of classroom teachers, on the grounds that as a member of the "M-Team" and a resource aid to teaching personnel, the nurse functioned in support of the total educational program. 9/ Subsequently in a recent decision the Commission clarified a unit so as to attach several professional positions to a previously certified unit of classroom teachers, stating therein:

"In order to carry out the principle of anti-fragmentation we have herein determined that all occupants of professional positions in a K through 12 school setting, who work with students and teachers, whether certified or not certified, by the Department of Public Instruction shall, absent special circumstances, be included in a unit consisting primarily of teachers. The facts herein warrant the inclusion of the positions involved in the existing unit, and we have amended the description of the unit reflecting such action by the Commission." 10/

The Commission is satisfied that the occupants of the school nurse and school psychologists positions have a background in education and work with students and with teachers in a nonsupervisory capacity in support of the educational program. The Commission, in the interest of avoiding fragmentation of units pursuant to a policy set forth in Section 111.70(4)(d)2a of MERA, includes said positions in the unit and the occupants thereof are eligible to vote.

Status of Ms. Jean Koslowitz

The record discloses that Bonnie Lynn functions as teacher-TRM and has assigned to her classroom some seven exceptional pupils, Ms. Jean Koslowitz, who holds a certification from DPI as a K through 6 elementary teacher, is employed as a Teacher aide in Lynn's classroom. The record further indicates that many aides utilized by the District do not hold certification or a degree and that the Municipal Employer did not require a degree, certification or extensive experience in working with the mentally retarded when it hired both Koslowitz and her predecessor, Buswell. Although Koslowitz participates closely with Lynn in exercising many of the primary teaching functions, both as a result of Koslowitz' certification and Lynn's policy to encourage a team approach, Lynn alone has the authority of the classroom teacher, and in fact exercises the ultimate responsibility for planning, directing and utilizing the services of Koslowitz as an aide. Therefore, Koslowitz is excluded from the unit as an aide.

During the course of the hearing the parties stipulated that the former teacher aide position, now designated as a full-time professional

9/ Cochrane-Fountain City School Dist. No. 1, (13700) 6/75.

10/ Joint City School District No. 1, City of Superior et al., (13238-A) 6/76. See also Whitefish Bay Schools (10799) 2/72; Stanley-Boyd Jt. School Dist. No. 4 (11589-A) 7/73; Hayward Jt. School Dist. No. 1 (12040) 7/73; Tomahawk Unified School Dist. No. 1 (12483-A) 5/74.

teacher of the Hearing Impaired Deaf and Hard of Hearing should be included in the unit. Therefore, the current incumbent of said position is eligible to vote in the election directed herein.

Dated at Madison, Wisconsin this 8th day of October, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner