

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XLIV
No. 19827 ME-1263
Decision No. 14161-A

Case I
No. 9691 ME-150
Decision No. 6746-C

Mr. Robert C. Kelly, Deputy City Attorney, appearing on behalf of the Union.

Madison Teachers, Inc., having filed a petition with the Wisconsin Employment Relations Commission to determine whether teachers under temporary contract should be included or excluded from an existing certified collective bargaining unit consisting of "All regular full-time and regular part-time certificated teaching personnel employed by Madison Metropolitan School District, including psychologists, psychometrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading [sic], University Hospital teacher, trainable group [sic], librarians, guidance counselors, teaching assistant principals (except at Sunnyside School), teachers on leave of absence, but excluding on-call substitute teachers, interns and all other employees, principals, supervisors and administrators," 1/ and a hearing having been held in the matter at Madison, Wisconsin, on February 19, 1976, Kay Hutchison,

1/ In June 1964 the Madison Education Association was certified as the exclusive bargaining representative for said employes (6746). In June 1966 the Commission amended the certification to reflect the change in the name of the organization to Madison Teachers, Inc., (6746-B). Although the record is inconclusive as to whether teachers under temporary contract were in existence at the inception of said bargaining unit, it is clear that there were teachers under temporary contract when the separate substitute unit was certified in 1974, (12747). During the conduct of the election for the substitute teachers, apparently, no party claimed that the holders of temporary contracts should be included in said unit.

No. 14161-A
No. 6746-C

Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

ORDER

That all teachers under temporary contract in the employ of Madison Metropolitan School District, shall be, and hereby are, included in the unit consisting of all regular full-time and regular part-time certified classroom teachers in the employ of said School District; and therefore the existing collective bargaining unit, presently represented by Madison Teachers, Inc., is hereby amended to read as follows:

"All regular full-time and regular part-time certified teaching personnel employed by Madison Metropolitan School District, including psychologists, psychometrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading teacher, University Hospital teacher, trainable group teacher, librarians, guidance counselors, teaching assistant principals (except at Sunnyside School), teachers on leave of absence, teachers under temporary contract, but excluding on-call substitute teachers, interns and all other employees, principals, supervisors, and administrators."

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING
UNIT AND AMENDING CERTIFICATION

This case was initiated by the petition of Madison Teachers, Inc., hereinafter referred to as the Petitioner, requesting that the Commission clarify an existing collective bargaining unit by determining whether teachers under temporary contract should be included or excluded from the collective bargaining unit in question. The Petitioner, contrary to the Madison Board of Education, hereinafter referred to as the District, contends that it is appropriate to include teachers under temporary contracts in the recognized collective bargaining unit consisting of all regular full-time and regular part-time certified teaching personnel employed by Madison Metropolitan School District, including psychologists, psychometrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading [sic], University Hospital teachers, trainable group [sic], librarians, guidance counselors, teaching assistant principals (except at Sunnyside School), teachers on leave of absence, but excluding on-call substitute teachers, interns, and all other employees, principals, supervisors, and administrators.

POSITION OF THE PARTIES:

The District basically argues that teachers under temporary contract are not employed on a regular basis because they are not assured of continuity of employment and should consequently not be included in the unit. The District contends that the terms of the labor contract treat "regular" teachers and teachers under temporary contract differently and that it was the intent of the parties to clearly distinguish between these two groups of employees. The District alleges that the Commission's decision in Greendale Board of Education and Greendale Education Association, Decision No. 12611, (4/74), in which it was found that replacement teachers should be excluded from the collective bargaining unit comprised of full-time teachers, is dispositive of the issue herein. Furthermore, the District also alleges that the issue herein was disposed of in Mt. Horeb Education Association, Decision No. 13160 (8/75), and that Examiner George Fleischli rejected therein the same arguments advanced by the Petitioner in the case at bar. Finally, the District avers that two arbitration decisions interpreting the labor agreement between the parties clearly established that teachers on temporary contract hold no rights under the teacher's collective bargaining agreement.

The Petitioner's primary argument is that on-call substitute teachers are clearly distinguishable from teachers under temporary contract and that the latter have a sufficient community of interest with "regular" teachers to be included in the unit with them. The Petitioner points out that merely because some of the provisions of the labor contract are not applicable to teachers under temporary contract is not dispositive of the issue herein. The Petitioner argues that the arbitration awards referred to by the District are inapposite to the issue involved in the instant matter.

DISCUSSION:

When a teaching position becomes temporarily vacant for more than one semester, the collective bargaining agreement provides that such positions are to be filled by a replacement teacher under temporary contract. The agreement also provides that regular full-time positions that are continuously vacant for less than one semester are to be filled

by hiring teachers on a temporary contract. 2/ Furthermore, replacement teachers under temporary contract may also be utilized for experimental programs.

Replacement teachers under temporary contract are hired from an employment pool maintained by the District. 3/ When a principal expresses a need for a replacement teacher, the District refers the eligible individuals, who have been screened, to the principal. The principal, after an interview, 4/ then recommends his/her choice for the position, and if said choice is approved by the District, a temporary contract is tendered. 5/

Temporary contract teachers are paid in accordance with the collective bargaining agreement in existence between the District and "all regular full-time and regular part-time certified teaching personnel," and receive the same wages as "regular" teachers. 6/ Temporary contract teachers assume the same duties and responsibilities as "regular" contract teachers. Although the parties are in disagreement over the eligibility of temporary contract teachers for certain leave and disability benefits, the temporary contract teachers, through the duration of their contracts, earn sick leave, are entitled to life insurance and health insurance benefits, and have state teacher retirement contributions and social security contributions made for them. The job functions, rate of compensation and monetary fringe benefits are substantially the same as the "regular" contract teacher. Furthermore, the District also deducts union dues pursuant to a fair share agreement for all regular teachers including those under temporary contract.

The fundamental difference between a temporary contract teacher and a "regular" contract teacher is that temporary contract teachers are employed for a fixed term without the right to be rehired, however, teachers employed under temporary contract may be and have been continuously employed for several years. On the other hand, "regular"

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- 2/ In contradistinction, on-call substitute teachers are subject to being called to replace an absent teacher on a day-to-day basis, with said assignments having a duration of one day to one semester.
 - 3/ A replacement teacher is in the same employment pool as a "regular" teacher. The employment pool is separate and distinct from the employment list of substitute teachers. The hiring for "regular" contract teachers and temporary contract teachers follows substantially the same procedure. Teachers under temporary contract, like teachers under regular contract, have similar credentials, including, of course, the requisite certification.
 - 4/ Personal interviews are not necessarily part of the hiring process for substitutes.
 - 5/ Substitute teachers are not required to execute individual teaching contracts.
 - 6/ Substitute teachers are paid in conformance with their own collective bargaining agreement. All substitute teachers are paid on a per diem basis. Short term substitutes, (assignments from 1 to 20 day duration), are currently remunerated at the rate of \$31.00 per day, while long term substitutes, (assignments in excess of 20 days), are compensated, on a pro rata basis, at the rate of a Bachelor or Master's Degree contained in the collective bargaining agreement.

teachers, once off probationary status, 7/ have the right to continued employment with the District unless certain well defined procedures are followed to sever the employment relationship.

Teachers under temporary contract certainly have as much interest in the wages, hours and working conditions governing their employment as the other part-time regular employees in the bargaining unit. 8/ Since the Employer hires temporary teachers year in and year out, sometimes hiring the same persons for consecutive years, and since temporary contract teachers spend substantial periods of a work year earning their livelihood as such teachers, both the nature of the positions they fill and the resultant substantiality of the employment relationship requires the conclusion that they are employees within the meaning of the Municipal Employment Relations Act with all the rights and privileges contained therein.

Section 111.70(4)(d)2.0 mandates the Commission to avoid the fragmentation of bargaining units. Here, if the teachers under temporary contract were not included in the bargaining unit with all regular full-time and regular part-time certified classroom teachers in the employ of the District, they would be in limbo and a fragmented group of employees would exist. If accreted, the number of positions involved herein will not significantly alter the size of the existing unit, nor will it, apparently, affect the representative status of the unit.

In order to effectuate the principle of anti-fragmentation we have herein determined that all teachers under temporary contract who are employed by the District be included in the unit in question. The facts herein persuade the Commission that there is a sufficient community of interest between the "regular" teachers and the teachers under temporary contract based on their similarity of job functions, wages, hours and conditions of employment so as to include the teachers under temporary contract in the unit with all regular full-time and regular part-time certified teaching personnel of the District and we have amended the description of the unit reflecting such action by the Commission.

The District's reliance on the Greendale and Mt. Horeb cases is misplaced. In Greendale, substitute teachers were excluded from the unit because the voluntarily agreed to unit included only "full-time certified" employees while the case at bar involves a certified unit consisting of both regular full-time and regular part-time employees. In Greendale, the Commission felt it was improper to amend the bargaining unit vis a vis a unit clarification since the evidence revealed that the unit included only those teachers who were employed full-time.

In Mt. Horeb, Examiner George Fleischli, given the particular factual setting of that case, where substitutes were specifically excluded from the voluntarily recognized unit, found that the parties intended to exclude from the umbrella of the collective bargaining

7/ Teachers under temporary contract do not undergo a probationary period.

8/ In Kenosha Unified School District No. 1, (Decision No. 14908, 9/76), the Commission held that substitute per diem teachers are regular employees regardless of the number of days taught. Correspondingly, teachers under temporary contract who work on a more continuous basis than substitute teachers, are also regular employees.

agreement all teachers hired from a list of substitutes to work in the place of absent teachers regardless of the reason for the absence or the duration of the absence. While Examiner Fleischli was concerned in Mt. Horeb with whether substitute teachers enjoyed certain rights under the contract in question, the instant matter is clearly distinguishable in that replacement teachers under temporary contract are not specifically excluded from the unit in question and the Commission is not making any determination with respect to what contractual rights, if any, teachers under temporary contract may enjoy. The only determination made herein is that it is appropriate for teachers under temporary contract to be in the same collective bargaining unit in question with the other regular full-time and part-time certified employees.

Finally, the District's insistence that the arbitration decisions are somehow dispositive of the issue herein is erroneous. The determination of the appropriate collective bargaining unit constitutes an issue that is within the exclusive domain of the Commission. The arbitration awards concerned an interpretation and application of the labor contract and disposed of a specific dispute between the parties. Even assuming that the arbitrators held that teachers under temporary contract enjoy no rights under the collective bargaining agreement, said decisions in no way control the Commission's finding that the teachers under temporary contract enjoy a sufficient community of interest with the other regular full-time and part-time certified employees so as to be included in the same unit. The Commission, in this matter, unlike the arbitrators, is not concerned with what particular rights and privileges the teachers under temporary contract enjoy as a result of being in said unit. 9/

Dated at Madison, Wisconsin this 7th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

- 9/ Although the parties argue the applicability of the present agreement to temporary contract teachers, that is not dispositive of the issue herein. Rather, the fundamental issue is whether the teachers under temporary contract have a sufficient community of interest with the "regular" teachers so as to be in the same collective bargaining unit. By finding that a sufficient community of interest exists so as to include the temporary teachers in the unit, the Commission makes no finding concerning the applicability of the labor agreement on said teachers. The terms and conditions of the Master Agreement are not automatically applicable to the replacement teachers under temporary contract unless collective bargaining has or will produce such a result. See Cochrane-Fountain City Education Association, (Decision No. 13700, 6/75).