

- - - - -	:	
In the Matter of the Petition of	:	
	:	
MADISON TEACHERS, INC.	:	Case XL
	:	No. 19636 ME-1242
Involving Certain Employees of	:	Decision No. 14508-C
	:	
MADISON METROPOLITAN	:	
SCHOOL DISTRICT	:	
	:	

**Ms. Susan Wiesner-Hawley**, Labor Contract Manager, Madison Metropolitan School District, 545 West Dayton Street, Madison, Wisconsin 53703, appearing on behalf of the Municipal Employer.

Madison Teachers, Inc., hereinafter referred to as MTI, having on January 29, 1982 filed a petition requesting the Wisconsin Employment Relations Commission to clarify bargaining unit and hearing in the matter having been held at Madison, Wisconsin on April 6 and October 26, 1982 before Mary Jo Schiavoni, Examiner; and the transcript of said proceeding having been prepared and the parties having filed briefs and reply briefs, the last of which was received on June 4, 1982 1/; and the Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby issues the following

3. That at all times material herein, MTI has been, and is, the certified bargaining representative for employees of the District employed in the following described units:

All regular full-time and regular part-time certificated teaching personnel employed by Madison Metropolitan School

No. 14508-C

District, including psychologists, psychometrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading teacher, University Hospital teachers, trainable group teachers, librarians, cataloger, educational reference librarian, text librarian, Title I coordinator, guidance counselors, teaching assistant principals (except at Sunnyside School), teachers on leave of absence, and teachers under temporary contract, but excluding supervisor - cataloging and processing, on call substitute teachers, interns and all other employees, principals, supervisors and administrators;

#### Substitute Teacher Unit

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 preceding said date. (Per Decision No. 13734-B, October, 1974); and

#### Aides Unit

All regular full-time and regular part-time school aides, including teacher aides, resource center aides, library aides, handicapped children's aides, and counselor aides but excluding lunchroom and playground supervisors, and all other employees.

4. That on January 11, 1977, in Decision No. 14508-A, the Commission directed an election in the substitute teacher unit, which the parties had agreed to expand so as to include all per diem substitute teachers, including homebound teachers, regardless of the number of days taught; and, that, as a result of said election the Commission in Decision No. 14508-B certified MTI as the exclusive collective bargaining representative of said employees based upon the results of said election.

5. That MTI and the District, on August 13, 1980, executed a Memorandum of Understanding, which voluntarily removed regular full-time interpreters for the deaf students in the District from the Aides Unit and placed them in the Teacher Unit; that commencing in January, 1981 and continuing through March, 1982, the District hired the following five individuals to serve as substitutes for the regular interpreters; and that the dates of hire of said substitute interpreters and the number of days worked by them until the date of hearing herein are reflected as follows:

<u>Name</u>	<u>Date of Hire</u>	<u>Days Worked</u>
Charlotte Walsvik	11/20/81	4
Sue Minor	03/33/82	0
Deborah Coughlin	03/22/82	1
Todd McGilligan	01/08/81	1
Roberta Zehner	11/11/81	long-term full-time

6. That on January 29, 1982, MTI, in its capacity as the bargaining representative of the employees in the Substitute Teacher Unit, petitioned the Commission to clarify and to determine whether the substitute interpreters listed above should be included or excluded from the Substitute Teacher Unit.

7. That the substitute interpreters are not required to possess a bachelor's degree or teacher certification, nor do their duties involve the consistent exercise of discretion and judgment in the exercise of primary teaching functions, as do those of substitute teachers, but rather consist almost exclusively of routinely interpreting to and for deaf students and teachers in the classroom.

8. That the District also employs ten substitute secretarial employees, who have individually averaged 28.9 days of work per year, as well as twenty-six

substitute food services workers, who individually average 75.05 hours per year; and that neither group of said substitute employees is included in any existing collective bargaining unit.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That since employees occupying the position of substitute interpreter are not professional employees within the meaning of Section 111.70(1)(a)(1) of the Municipal Employment Relations Act, said employees cannot be included in the per diem substitute teacher collective bargaining unit by unit clarification.

2. That since there are other unrepresented substitute non-professional support staff employees employed by the District, substitute interpreters do not in and of themselves constitute an appropriate bargaining unit for collective bargaining within the meaning of Section 111.70(4)(d) 2.a. of the Municipal Employment Relations Act.


Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following


ORDER

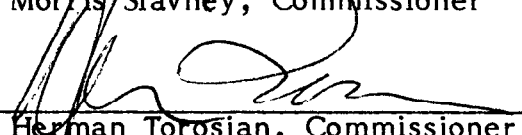
That the instant petition for unit clarification be and the same hereby is, dismissed. 2/

Given under our hands and seal at the City of  
Madison, Wisconsin this 15th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
\_\_\_\_\_  
Gary L. Covelli, Chairman

  
\_\_\_\_\_  
Morris Slavney, Commissioner

  
\_\_\_\_\_  
Herman Torosian, Commissioner

---

2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER DISMISSING  
UNIT CLARIFICATION PETITION

Background

In August of 1980, the District and MTI voluntarily agreed to include regular interpreters for the deaf students in the teacher bargaining unit. Thereafter, the District hired a group of individuals to serve as substitutes for the regular interpreters. MTI then filed a petition requesting the Commission to clarify the existing substitute teacher bargaining unit to include the substitute interpreters.

Position of MTI

MTI contends that the substitute interpreters are regular full-time and regular part-time employees. It argues that the District treats substitute interpreters like substitute teachers for general employment purposes. Calls to all substitutes, both teachers and interpreters, are made between 6:00 a.m. and 10:00 a.m. by the same person. Substitute interpreters carry a "substitute teacher card" for identification and payroll purposes. It maintains that like substitute teachers, substitute interpreters are and will be an established part of the District's educational program. MTI asserts that the substitute interpreter position is a new one which did not exist at the time it was initially certified as representative for the substitute teacher unit, and that the substitute interpreters share a broad community of interest with the substitute teachers, including duties and location of work, nature of supervision, skills, education, hours, contact, and employee status and benefits. Moreover, it claims that the small number of positions to be accreted would have no significant effect on the unit.

Position of the District

The District argues that the substitute interpreters are casual employees who work infrequently and irregularly. It maintains that the inclusion of all per diem substitute teachers regardless of days worked in the substitute teacher unit is based on a stipulation of parties which should not be applied to the substitute interpreters. The District urges the Commission to find that substitute interpreters lack a community of interest with the substitute teachers relying primarily upon the fact that substitute interpreters do not have the same professional standing as substitute teachers. Pointing to the Substitute Agreement provision requiring a bachelor's degree and teacher certification for substitute teachers, it argues that substitute interpreters are not required to have either a degree or teacher certification. Rather, according to the District, the certification for substitute interpreters is similar to that of teacher's aides.

Discussion

In evaluating the respective positions of the parties it is apparent that the level of education and skills required to serve as a substitute interpreter varies significantly from that necessary to serve as a substitute teacher. Moreover, substitute interpreters do not exercise substantial discretion or judgment in their classroom duties. Rather, they function under the direction of the classroom teacher in a manner similar to that of a teacher's aide, and interpret for and on behalf of deaf students in the classroom. The record indicates that only two of the five substitute interpreters have a bachelor's degree. Moreover, to attain the Registered Interpreter for Deaf (RID) certification possessed by the substitute interpreters, it is not necessary to have earned a bachelor's degree or even to have completed a two year training program because the RID certification is a measure of competency in interpreting. At least, theoretically, an individual who gains the requisite knowledge through life experiences could be certified without any formal education whatsoever.


The Commission is satisfied that substitute interpreters are not professional employees and as such cannot, by clarification, be commingled with professional

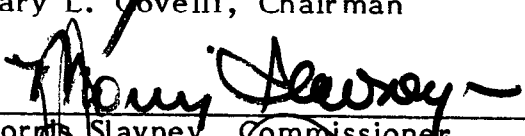
employees without a vote by said professional employees. River Falls Joint School District, (13804-A) 10/8/76; Madison Area VTAE District (8382-A) 1/29/80; Milwaukee Area VTAE Board (8736-B, 16507-A) 8/22/78.

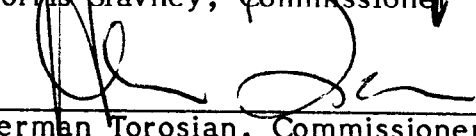
At the hearing, MTI expressed a willingness to participate in an election in a unit consisting of substitute interpreters, should the Commission determine the requested accretion to be improper. The record, however, contains evidence that there are other substitute support staff employed by the District. Inasmuch as these other substitute support staff are unrepresented, non-professional residual employees of the District, a unit consisting solely of substitute interpreters would be improper as it clearly would constitute an undue fragmentation of bargaining relationships contrary to the policy set forth in Section 111.70(4)(d) 2.a. of the Municipal Employment Relations Act. Randall Consolidated School District, #1, (18291) 12/9/80; Milton School District (19039) 10/15/81; Maple School District (18469) 2/24/81; and Columbus School District (17259) 9/79. Accordingly, the Commission will not direct an election in such an alternative unit. We are therefore discussing the petition filed herein.

Dated at Madison, Wisconsin this 15th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner