

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

BANGOR EDUCATION ASSOCIATION

For Clarification of Bargaining Unit  
Involving Certain Employees of

BANGOR JOINT SCHOOL DISTRICT NO. 2  
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Case I

No. 19420' ME-1223

Decision No. 14699

Appearances:

Mr. James Bertram, Coulee Region United Educators, for the Petitioner.

Mr. John Bosshard, Bosshard, Sundet and Talcott, Attorneys at Law,  
for the Employer.

ORDER CLARIFYING BARGAINING UNIT

The Bangor Education Association, having on July 29, 1975, filed a petition with the Wisconsin Employment Relations Commission, wherein it requested that the Commission clarify an existing voluntarily recognized collective bargaining unit of certain employees of Bangor Joint School District No. 2; and a hearing regarding said petition having been held at LaCrosse, Wisconsin, on September 24, 1975, Peter G. Davis, 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

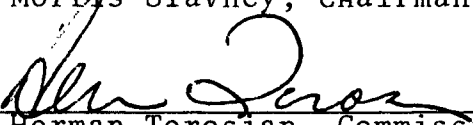
That the position held by Ms. Mary Slater during the 1974-1975 school year was that of a part-time teacher and therefore said position shall be, and hereby is, included in the collective bargaining unit consisting of "all contracted and certified teachers of the District, librarians, and guidance counselors, but excluding principals and assistant principals spending more than half their time in supervision, administrators, coordinators, business manager, superintendent, para-professionals, clerical aides office, clerical, maintenance and operating personnel, nurses, social workers, and instructional personnel in Federal project funded 100% by Federal funds."

Given under our hands and seal at the  
City of Madison, Wisconsin this 9th  
day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

The issue to be resolved herein is whether the position held by Ms. Mary Slater during the 1974-1975 academic year should have been included in a bargaining unit which consisted of "all contracted and certified teachers . . ." Arguing for such inclusion, the Association asserts that Slater performed the duties of a teacher during the 1974-1975 academic year while functioning under the same working conditions and receiving some of the same fringe benefits as other teachers included in the bargaining unit. The District contends that Slater was hired as an "aide", that, as a result, her compensation and job responsibilities differed substantially from those of bargaining unit teachers, and that, therefore, she should be excluded from the bargaining unit which by its terms excluded "paraprofessionals" (aides).

The record indicates that the District had, for several years, employed certified individuals at an hourly wage rate to perform certain duties within the school system's music department. Individuals holding said positions were not included in the bargaining unit. In August, 1974, as evidenced by the testimony of members of the Board of Education and the minutes of said Board's August 21, 1974 meeting, it was clearly the intent of the District to employ Ms. Mary Slater, a certified individual, to fill a similar position, designated as a music instructional aide, for the 1974-1975 school year. On August 23, 1972, Ms. Slater signed a contract with the Board of Education which stated that "said employee is to be employed in music" at \$3.25 per hour for an average of 20 hours per week. Said contract differed substantially, both in form and substance, from the individual contracts signed by bargaining unit teachers.

However, the record also reveals that Ms. Slater was unaware that she had been hired as an aide or paraprofessional, believing that she had been hired as a part-time teacher. In March, 1975, she became aware of her uncertain status.

Ms. Slater performed virtually all of the duties of a bargaining unit teacher and effectively functioned as a contributing member of the school system's music department. She was responsible for teaching Junior High Choir, Senior High Choir and Men's Glee Club and independently auditioned, graded and disciplined students in said activities. She also conducted vocal lessons with individual students and prepared the musical groups under her direction for competitive events and concerts. Working with the two full-time members of the music department, she assisted in developing a report detailing the department's philosophy, objectives and course offerings. On occasion, she substituted for the other music teachers. All the aforementioned responsibilities were performed under the same working conditions applicable to other teachers. However, unlike some full-time teachers, Ms. Slater was not assigned study hall and counseling functions and was not required to attend in-service programs. Ms. Slater did, however, monitor hallways and restrooms and did attend some in-service programs. Her duties required an average of slightly more than twenty hours per week to perform. Her hourly wage rate was occasionally supplemented in accordance with the extracurricular duty pay schedule, but she received no fringe benefits.

This is not a case where the Association is seeking to accrete a group of employes (part-time teachers) to a voluntarily recognized bargaining unit contrary to the Commission's policy in the Cudahy case. 1/

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1/ City of Cudahy (12997) 9/74.

The question presented herein is whether part-time teachers are included within the unit previously agreed to by the parties.

When clarifying a bargaining unit, the Commission has given primary and controlling emphasis to the actual duties and responsibilities of the individual holding the position in question. The position's past bargaining unit status or the compensation received by an individual holding the position are conceivably relevant and yet secondary considerations. The contents of the employment contract received by an individual will be disregarded if the effect of said contract's contents clashes with the conclusion drawn from an examination of the duties and responsibilities of the position.

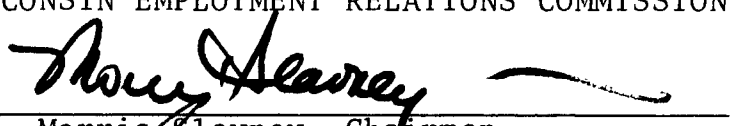
As noted previously, the record herein reveals that Ms. Slater was certified to perform, and did in fact discharge the duties and responsibilities of a teacher in the collective bargaining unit, and that she carried out those duties and responsibilities under the same basic working conditions applicable to bargaining unit teachers. The fact that she was not assigned study hall or counseling duties is not sufficient to meaningfully distinguish Slater from her bargaining unit colleagues. On the basis of the noted similarities in duties and responsibilities, the Commission concludes that Ms. Slater performed as a part-time teacher during the 1974-1975 academic year. As the unit description specifically includes "all contracted and certified teachers" and does not mention part-time teachers in its lengthy recital of those positions excluded from the unit, the Commission concludes that the position held by Ms. Slater during the 1974-1975 academic year is included in the bargaining unit. 2/

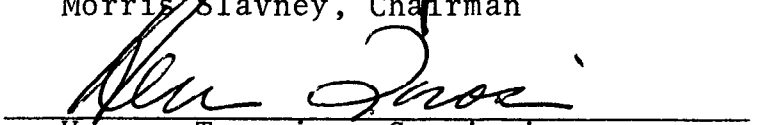
The conclusion that Ms. Slater, as a part-time teacher, is included in the voluntarily recognized bargaining unit does not automatically extend coverage of the provisions of the collective bargaining agreement to her. It would appear from a cursory examination of the agreement in question that the parties have not bargained over the question of which, and in what proportion, benefits enumerated should be extended to part-time teachers. The question of the proper application of the provisions of the agreement to part-time teachers is a matter over which the Petitioner has the right, and the Municipal Employer has the duty, to bargain.

Dated at Madison, Wisconsin this 9th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

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2/ This conclusion does not represent a departure from the Commission's decision in Sauk-Prairie School District (12240-A) wherein a teachers aide was excluded from the bargaining unit. As noted in that decision the duties and responsibilities of the aide differed substantially from those of bargaining unit teachers.