

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case II  
No. 18705 ME-1145  
Decision No. 15214

Mr. Frank E. Burdick, Representative, Wisconsin Education Association, appearing on behalf of the Petitioner.  
Mr. Robert West, Executive Director, appearing on behalf of the Petitioner.  
Mr. Francis Peichel, Superintendent, appearing on behalf of the Municipal Employer.

Northwest United Educators having petitioned the commission on January 10, 1975, to clarify a voluntarily recognized collective bargaining unit so as to include the position of school psychologist in the unit consisting of "all employees of the District engaged in teaching, including but not limited to classroom teachers, librarians and guidance personnel (all hereinafter referred to as 'teachers') but excluding the following:

- "1. Administrators, principals, assistant principals, and coordinators and supervisors who supervise 50% or more of the time.
- "2. Teachers employed less than half-time, interns, practice teachers and substitutes.
- "3. Office, clerical, maintenance, operating employees and teacher aides.
- "4. Non instructional personnel such as nurses, social workers and psychologists."

and a hearing in the matter having been held on June 11, 1975, in Barron, Wisconsin, before Dennis P. McGilligan, hearing officer; and the commission having considered the evidence and arguments of the parties and being fully advised in the premises, and being satisfied that the position of school psychologist should not be included in the unit described above;

NOW, THEREFORE, it is

That the petition be, and the same hereby is, dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin this 28th  
day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER DISMISSING PETITION

Petitioner is the voluntarily recognized bargaining representative of employees employed by Cumberland Community Schools Joint District No. 2 in the aforementioned unit. On January 10, 1975, petitioner filed a petition for clarification of the position of school psychologist, occupied by Kathleen Strong. Hearing in the matter was held on June 11, 1975, at Barron, Wisconsin. A transcript was issued on June 17, 1976. Petitioner filed a brief on December 24, 1976. The employer did not file a brief.

Petitioner argues that Strong regularly works with children in support of the educational program and performs functions essentially the same as those performed by other members of the bargaining unit. Petitioner relies on the anti-fragmentation policy, sec. 111.70(4)(d) 2a, Stats., to support its contention that Strong should be included in the existing bargaining unit.

The employer claims that the petitioner seeks to negate the prior agreement of the parties by including a position it previously agreed to exclude from the bargaining unit. Employer claims that the commission's decision in Fox Valley Technical Institute (13204) 12/74 prevents petitioner from doing so. Petitioner, on the other hand, contends that the issue in Fox Valley was procedural and not substantive, and that in any event the parties have stipulated that the commission should decide the substantive issue.

Fox Valley, supra, is controlling. That case relied on City of Cudahy (12997) 9/74 which held:

"Where there exists a voluntarily recognized unit and where certain classifications of employees have been excluded from the unit, and a party involved in the recognition agreement opposes the proposed expansion, the Commission will not expand said unit without an election in the unit deemed appropriate."

Accordingly the commission has dismissed the petition.

The commission will dismiss an election petition, and/or decline clarification of a voluntarily recognized unit, where the petitioner seeks to represent employee(s) occupying positions which were excluded from the voluntarily recognized unit, if such positions do not constitute all of the remaining unrepresented employees as a residual unit. 1/ If, however, such positions constituted all the remaining unrepresented professional employees, the commission would process a petition for an election so as to protect the rights of such employees to representation, even in the absence of a petition for an overall vote, 2/ i.e., including employees in the voluntarily recognized unit as well, notwithstanding the anti-fragmentation policy. On the other hand, should the petitioner appear on the ballot in such a proceeding, and should a majority of the eligible voters vote to be represented by the petitioner, the commission would merge the residual unit with the overall professional unit. 3/

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- 1/ Cochrane-Fountain City Community Jt. School Dist. #1 (13700) 6/75.
  - 2/ See Fox Valley Technical Institute supra.
  - 3/ City of Milwaukee (13099) 10/74.

The employer has not waived its right to rely on these cases. The employer's so-called "stipulation" was only that the contractual bargaining unit definition would stand until the commission made a ruling. (Tr. 6-7) Such an agreement does not constitute a clear waiver of the right to argue that under the commission's decisions the bargaining unit should remain the same in this clarification proceeding because it had voluntarily been agreed upon.

Dated at Madison, Wisconsin this 28th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Charles D. Hoornstra  
Charles D. Hoornstra, Commissioner