

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
WISCONSIN FEDERATION OF TEACHERS  
Involving Certain Employees of  
JEFFERSON JOINT SCHOOL DISTRICT  
NO. 10  
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Case V  
No. 20411 ME-1324  
Decision No. 15336

Appearances:

Mr. Steven Kowalsky, Representative, appearing on behalf of the  
Petitioner.

Melli, Shiels, Walker & Pease, Attorneys at Law, by Mr. James K.  
Ruhly, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Wisconsin Federation of Teachers, by its representative Steven Kowalsky, having petitioned the Wisconsin Employment Relations Commission, herein commission, to conduct an election pursuant to sec. 111.70, Stats., among certain employees of Jefferson Jt. School District No. 10, herein district; and hearing on said petition having been conducted on May 17, 1976 at Jefferson, Wisconsin, by Thomas L. Yaeger, hearing officer; and the commission having considered the evidence and being satisfied that a question has arisen concerning appropriate units and representation of certain employees of Jefferson Joint School District No. 10;

NOW, THEREFORE, it is

ORDERED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive in the following voting groups:

VOTING GROUP NO. 1

All regular full-time and regular part-time secretaries, custodians, teaching aides, cooks and servers employed by Jefferson Joint School District No. 10, but conditionally excluding Title I aides and fully excluding supervisors, confidential, managerial or executive employees and all other employees, who were employed on March 9, 1977 except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by the Wisconsin Federation of Teachers on matters of wages, hours and conditions of employment.

VOTING GROUP NO. 2

All Title I teacher's aides employed by Jefferson Joint School District No. 10 who are employed on March 9, 1977 except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining:

1. Whether a majority of such eligible employees desire to be included in one single bargaining unit with the employees set forth in voting Group No. 1 above, and

2. Whether a majority of such employees voting desire to be represented by the Wisconsin Federation of Teachers for the purposes of collective bargaining with Jefferson Joint School District No. 10.

Given under our hands and seal at the City of Madison, Wisconsin this 4<sup>th</sup> day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Charles D. Hohnstra  
Charles D. Hohnstra, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

During the course of the hearing, issues arose as to the appropriate bargaining unit and the inclusion therein of certain individuals. The parties, however, did stipulate to the inclusion of the custodians, cooks, and teaching and library aides (exclusive of Title I aides) in an appropriate unit, as well as to the exclusion of the superintendent's secretary and the district bookkeeper from an appropriate unit as confidential employees.

Part-time

An issue arose as to whether employees working less than 15 hours per week should be included in the unit. The union seeks their exclusion while the district seeks inclusion of all regular full-time and regular part-time employees, irrespective of the hours worked. The commission has a well-established policy of not requiring regular part-time employees to work a specified number of hours in order to be included among those eligible to participate in an election 1/ and, unless the commission is presented with special circumstances indicating that a group or groups of regular part-time employees do not in fact have a definite interest in wages, hours and working conditions governing employment, such employees shall be deemed eligible for inclusion in a bargaining unit with full-time employees. 2/ There are no special circumstances present herein and, therefore, regular parttime employees are included in the unit.

Servers

An issue arose as to the inclusion of servers in the unit. The union claims that servers should be excluded from the unit, whereas, the district argues for their inclusion on the basis of their community of interest with cooks and other employees in the unit. The union offered no explanation as to its desire to have the servers excluded but, presumably it is because said servers work less than 15 hours per week.

There are nine servers employed by the district in its food service program. Their principal duty is the distribution of food at the individual participating schools. 3/ Such food is prepared by the six cooks at the senior high school; the servers also clean up after the meal has been served. They are assisted and directed in the performance of their duties by each school cook acting in the capacity of working leader, but they are supervised by the building principal.

The servers, like the cooks, are hired by the business manager of the school. The only prerequisites to hire are some prior experience with food service work and an ability to work in a student environment. They regularly work anywhere from an hour and three-quarters to three hours per day, while the cooks work an average of seven hours per day. The cooks are compensated on an hourly basis ranging from \$2.50 to \$2.90 per hour, while the servers are paid by the day ranging in amount from \$5.00 to \$6.00 per day. The servers, like the para-professional aides, are not provided with health insurance but, are allowed to subscribe at their own expense. Also, the servers, like the cooks and para-professional aides, do not receive vacation benefits, nor do they receive sick leave benefits as do the cooks and custodians.

1/ City of Edgerton (11340) 10/72.

2/ Kenosha Unified School Dist. #1, (11293 and 11293-B) 9/72.

3/ Other than the high school, food is served at the West Elementary, East Elementary and junior high schools.

We are satisfied on the basis of the foregoing that the servers share a sufficient community of interest with the cooks to warrant their inclusion as regular part-time employees in the unit. Also, their inclusion avoids unit fragmentation in keeping with sec. 111.70(4)(d)2.a., Stats.

#### Secretaries

The district contends that in addition to the secretaries excluded by stipulation as confidential employees, the other secretaries employed by the district are also confidential and, therefore, must be excluded. The union, on the other hand, argues that all secretaries, but for those excluded by stipulation, should be included in the unit as they are not confidential employees.

The commission's policy regarding the exclusion of confidential employees from bargaining units of municipal employees relates only to those employees who are privy to, or participate in, confidential matters relating to labor relations. 4/

#### Esther Garcia

Garcia is the secretary for the Rome and Sullivan Elementary Schools and the only secretary in those schools. She spends approximately one-half of her work week at each school. In that capacity she answers phones and delivers mail. The record establishes that she has little, if any, access to or involvement with confidential matters relating to labor relations. We conclude, therefore, that Garcia is not confidential, within the meaning of sec. 111.70(1)(b), Stats., and therefore, is eligible to vote in the election.

#### Barbara Stephan

Stephan is the secretary to the principal of the West Elementary school and the only secretary in the school. In that capacity, she answers phones, delivers the principal's mail unopened, types some of the principal's correspondence, and, has access to student and employee records including teacher evaluations, although she does not type said evaluations or otherwise assist in their preparation. She also generally does not type any of the principal's correspondence with the district's superintendent. She has, on occasion, however, after hours, typed some correspondence to the superintendent from the principal regarding contract negotiations with teachers, but she was not involved with the formulation of bargaining strategy or any other aspect of negotiations.

It is clear from the foregoing that Stephan's involvement with confidential matters relating to labor relations is de minimis. 5/ Furthermore, the communications of a confidential nature which she types are directed to the superintendent, whose secretary has been excluded from the unit as confidential and who could type the limited number of memos involved if it is necessary that they be typed. 6/ Therefore, we have concluded that Stephan is not a confidential employee within the meaning of sec. 111.70(1)(b), Stats., and therefore, is eligible to vote in the election.

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4/ City of Milwaukee (11971) 7/73; Juneau County (12814) 5/75; City of Lake Mills (9516-D) 3/76; Kenosha V.T.A.E. Dist. (14993) 10/76.

5/ Sheboygan Board of Education (10488) 8/71; Eau Claire Public Library (10789) 2/72.

6/ Menomonee Falls Jt. School Dist. #1 (11669) 3/73; Cudahy Board of Education (12087) 8/73.

Marilyn Schuld

Schuld is secretary to the principal of the high school with her office located in the junior high school. In this capacity she has access to personnel records and teacher evaluations which she types; she answers phones, delivers mail and types those communications from the principal to the superintendent that require typing. In addition, she is responsible for maintaining records for the school hot lunch program. However, there is no evidence that Schuld is privy to management decisions with respect to personnel or labor policies.

We conclude, therefore, that while Schuld may have access to personnel records, this standing alone is not sufficient to give her confidential status; 7/ and, therefore, she is eligible to vote in the election.

Marie Hathaway

Hathaway works as a secretary in the senior high school and primarily works under the direction of the assistant senior high school principal. In that capacity, she is responsible for the updating of student records and reports and the assistant principal's correspondence. On the basis of the foregoing we have concluded that Hathaway does not participate in or have access to confidential matters and, therefore, she is eligible to vote in the election.

Eileen Keller

Keller is employed as the secretary to the high school principal. She answers phones, maintains student activity accounts, takes dictation, types correspondence, and on occasion has typed memos from the principal to the superintendent concerning teacher contract negotiations like Stephan. She also has access to employe personnel files.

While Keller has access to personnel files, this alone is not sufficient to cause her exclusion from the bargaining unit, 8/ and further any other involvement she has with confidential matters relating to labor relations is de minimis. 9/ We therefore conclude that Keller is eligible to vote in the election.

Shirley Koeppel

Koeppel is employed as the school secretary at the East Elementary School. In that capacity she types the principal's correspondence and staff evaluations like Schuld, delivers mail, maintains hot lunch collection program and has access to staff personnel files like Keller. Also, like Keller, we conclude, for the reasons noted herein, that Koeppel is eligible to vote in the election.

Ruth Frohmader

Frohmader is the business office secretary and has her office adjacent to the superintendent's secretary. In this capacity she works with the bookkeeper in helping to prepare reports to the Department of Public Instruction. She also performs clerical functions for the district's

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7/ Racine Area Voc., Tech. & Adult Ed. Dist. (9138) 8/69: County of Milwaukee (11382D) 9/74.

8/ Ibid.

9/ Sheboygan Board of Education, supra; Eau Claire Public Library, supra.

psychologist, learning disability teachers and speech therapists. In addition, she types school board meeting minutes and some matters contained therein relating to personnel matters. However, in the past, when she was too busy with other duties to type the minutes, the superintendent's secretary did so. Furthermore, even though portions of the minutes relate to personnel matters those segments could be typed by the superintendent's secretary who is excluded from the unit as confidential. 10/

We have concluded, therefore, that Frohmader is not a confidential employe and is eligible to vote in the election.

#### Title I - Teacher Aides

The district employs three Title I teacher aides to work with kindergarten through sixth grade students in the area of reading. The employes are Beverly Schemmer, Beth Wahl and Carolyn Haas. These aides work directly with students in reading, prepare their own teaching materials, and prepare reports for parents on the students' progress. Their primary function is to help teach reading. The incumbents are certified teachers who work with other elementary teachers in correlating their programs. They work approximately seven and one-half hours per day and are compensated at the rate of \$28.00 per day. This compares with other aides employed by the district who perform clerical tasks and playground supervision, are paid on an hourly basis, and earn between \$2.40 and \$2.55 per hour.

The district contends the Title I aides should be excluded from the unit in that they are professional employes, and further do not share a community of interest with other employes in the unit. The union, on the other hand, argues for their inclusion in the unit because of the community of interest existing between them and other employes in the unit and the need to avoid unit fragmentation.

We have concluded from the foregoing that the Title I aides do not share a sufficient community of interest with the other employes because of the para-professional nature of their work and their professional credentials. Therefore, Title I aides Schemmer, Wahl and Haas will not be included in the unit of secretaries, custodians and food service employees unless they desire to be included therein. 11/ A separate ballot box shall be utilized for the ballots cast by the Title I aides. The sequence of counting will be as follows:

1. The ballots cast by the Title I aides as to their desire to be included in a single unit with employes in Voting Group No. 1 will be tallied first.
2. If the Title I aides vote in favor of being included in a single unit with employes in Voting Group No. 1 the commission's agent shall comingle their ballots with the ballots cast by the employes in Voting Group No. 1 in such a manner to preserve the secrecy of the ballots and thereupon tally the combined ballots.
3. If a majority of the eligible Title I aides do not vote in favor of the inclusion in the said unit, the representation ballots cast by the Title I aides and Voting Group No. 1 will be counted separately to determine whether a majority of the

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10/ Menomonee Falls Jt. School Dist. #1, supra; Cudahy Board of Education, supra.

11/ Milwaukee Voc. Dist. #9 (10882) 2/7; Menomonie Jt. School Dist. (14738) 6/76.

Title I aides as well as a majority of Voting Group No. 1 desire to be represented by the Wisconsin Federation of Teachers.

In the event that Title I aides vote for inclusion in a single unit with employes in Voting Group No. 1, the appropriate bargaining unit shall consist of all regular full-time and regular part-time secretaries, custodians, teaching aides, cooks and servers, including Title I aides, in the employ of Jefferson Jt. School Dist. #10, but excluding supervisors, confidential, managerial or executive employes and all other employes. Should the Title I aides reject inclusion in said unit, the appropriate units shall consist of (1) all regular full-time and regular part-time secretaries, custodians, teaching aides, cooks and servers in the employ of Jefferson Jt. School Dist. #10, but excluding Title I aides, supervisors, confidential, managerial or executive employes and all other employes; and (2) all Title I teaching aides employed by Jefferson Jt. School Dist. #10, excluding supervisors, confidential, managerial or executive employes and all other employes.

Dated at Madison, Wisconsin this 27<sup>th</sup> day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Charles D. Hoonstra  
Charles D. Hoonstra, Commissioner