

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

HARTFORD UNION HIGH SCHOOL

Case X
No. 21346 ME-1415
Decision No. 15745

Messrs. Gary A. Marsack and James S. Clay, Attorneys at Law, appearing
on behalf of the Municipal Employer.

The Petitioner named above having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Sec. 111.70, Stats., among certain employees of the Municipal Employer, named above. Hearing was held in the matter on March 25 and April 4, 1977 at Hartford, Wisconsin before Marshall L. Gratz, Examiner. Following the distribution of transcript and submission of post-hearing briefs, the Commission has considered the evidence and is satisfied that questions concerning the appropriate unit and representation have arisen involving certain employees of the Municipal Employer named above.

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this direction, in an appropriate bargaining unit consisting of all regular full-time and regular part-time aides, technicians, paraprofessionals and clerical employees employed by the Hartford Union High School Board of Education, but excluding certified teaching personnel, food service employees, custodial employees, professional employees, confidential, supervisory and managerial personnel and all other employees who were employed by the Municipal Employer on August 11, 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 Hartford Skilled Employees Association, affiliated with Cedar Lake United Educators, WEAC, NEA, for the purposes of collective bargaining with Hartford Union High School on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 12th
day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Municipal Employer operates a single-building high school. Only a bargaining unit of its certified teaching personnel 1/ is presently represented for the purposes of collective bargaining. In addition to said teaching personnel, as well as supervisory and managerial personnel, the Municipal Employer employs seven secretaries, seven paraprofessionals, five "aides and technicians", one television director, ten food service employes and twelve custodians.

Petitioner seeks an election in a unit consisting of:

"all regular full-time and part-time aides, 2/ technicians and television personnel employed by Hartford Union High School Board of Education, but excluding all supervisory and certificated professional employes."

In response to the petition and the positions taken by Petitioner in support thereof, the Municipal Employer, contrary to the Petitioner, takes the following positions:

1. Only a substantially broader unit would be appropriate, to wit:

"all regular full-time and part-time aides, paraprofessionals, clerical employes, custodial employes and food service employes employed by the Hartford Union High School Board of Education, but excluding confidential employes, professional employes, full-time and part-time certified personnel, supervisors and all other employes and administrators." 3/

2. Television director, John Timmer, is a professional employe so lacking a community of interest with the balance of the appropriate unit that he should not be allowed to determine for himself whether he wishes to be included therein. The Petitioner's alternate request (that, if Timmer is found to be a professional, his status regarding inclusion in the certified teaching personnel unit be determined herein) should be rejected as not proper since no such request has been filed concerning that issue by either of the parties to the contract covering that unit.

3. Susan Brown, secretary to the principal, and Janet Martin, secretary to the Superintendent, should be included in the unit since they are not confidential employes.

4. Part-time paraprofessionals Joanne Gruber and Karen Wink should be included in the unit since they are regular part-time employes.

1/ That bargaining unit consists of:

"All full-time and part-time certified teaching personnel employed by the Board, including guidance counselors and librarians, but excluding outside consultants and specialists, supervisors, principals, assistant principals, substitute teachers, office clerical employees, non-teaching staff, social workers, nurses, psychologists, teaching aides, confidential employees and all other employees and administrators."

2/ Petitioner includes the Municipal Employer's paraprofessional group within its use of the term "aide".

3/ Petitioner has indicated a desire that its petition be deemed withdrawn if either the custodial or food service employes are included in the unit desired by the Petitioner.

DISCUSSION:

Appropriate Unit

Section 111.70(4)(d)2.a. of MERA provides that fragmentation of bargaining units should be avoided "by maintaining as few units as practicable in keeping with the size of the total municipal work force." 4/ That provision, however, also states that "the Commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions, or other occupational groupings constitute a unit." We have previously noted that:

"Taken together, these two requirements in effect dictate that a balance must be struck between stability on the one hand, and the need for ensuring that the unique interests of a given group of employees will not be subordinated to the interests of another bargaining group. It is for that reason that the Commission looks to the facts of a given case to determine the appropriateness of a particular bargaining unit." 5/

Here, the Commission is satisfied that the Municipal Employer's clerical employees share a sufficient community of interest with the employees in the petitioned-for unit to be included in the same unit with them. For, the evidence indicates that a significant portion of the duties of aides, para-professionals and technicians involve clerical functions such as typing, record keeping and filing. While that resultant unit shares a common building and common ultimate supervision under the Municipal Employer's business manager with the food service and custodial groups, differences between the job functions of the resultant unit and the functions of the latter two groups is sufficient to warrant establishing a "white collar" non-professional unit separate from the custodial and food service employees. For, unlike the clerical functions that characterize a significant portion of the work of the employees in the "white collar" unit, the duties of custodial employees are generally cleaning and maintaining physical structures and grounds, and the duties of food service employees are preparing and serving foods. Furthermore, there is little, if any integration between the white collar and the other employees even though ultimate evaluation, discipline and wage/working condition determinations have been made by the business manager for all. On balance, the single building work location and the common role of the business manager is not sufficient to outweigh the distinctions in job functions between the groups, and, contrary to the Municipal Employer's characterization, 18 or 19 eligibles in the white collar unit constitute more than a "handful" i.e., enough to constitute a separate unit onto themselves.

Television Director

The Commission is satisfied that the television director, John Timmer, is a professional employee within the meaning of Section 111.70(1)(1)1,

4/ Petitioner's assertion that anti-fragmentation policy considerations may only be considered where some portion of all the non-professional employees of a municipal employer are already organized is without merit. Such a policy would often require the Commission to permit an excessively fragmented unit to be created making fulfillment of the legislative policy thereafter much more difficult.

5/ Joint School District No. 8, City of Madison, (14814-A) 12/76.

Stats. 6/ He performs integral roles in the Municipal Employer's elaborate television operations. Those operations include videotaping of certain student classroom activities for instructive playback, use of such equipment for teaching students about the television industry, providing classroom videotape playback of pre-recorded lessons and programs prepared in-house or elsewhere, and production and airing of programs for a cable television audience of local residents (e.g., home basketball games, etc.) Timmer consults with teachers concerning the use of the television medium and equipment for various projects and supervises students in set construction, use of the studio equipment, lighting, etc. in the production of Municipal Employer programming. On occasion, he has written program scripts himself. Work of that sort absorbs much of Timmer's time. It is work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work, and it involves the consistent exercise of discretion and judgment in its performance. The quality of the programs produced or of the experiences shared by the students with whom Timmer works cannot be standardized in relation to a given period of time. In performing such work, Timmer utilizes specialized knowledge in the area of radio and television production and direction and in the operation of specialized equipment such as television cameras, videotape machines, lighting, sound and editing equipment. He obtained that knowledge by acquiring a bachelor of arts degree from the University of Wisconsin in communication arts wherein his last two years of study were specialized in the area of radio and television production. His educational preparation therefore consisted of a prolonged course of specialized intellectual instruction and study in an institution of higher education, rather than of work experience in the performance of routine mental, manual, or physical processes. It is also fair to say that the specialized knowledge Timmer possesses and uses is customarily acquired by such study in such institutions rather than from routine mental, manual or physical processes work experience. 7/ While some of the media aides have learned on the job to operate cameras and other studio equipment, their work in this regard does not require the broad and specialized background in production and direction that Timmer's consultations and overall program production and supervision activities require.

It would appear that the Municipal Employer employs a number of other unrepresented professional employees, who, like the television director, work with teachers and students in support of the educational program. If the Commission were to conduct a separate vote allowing the incumbent to determine for himself if he desired to be included in the non-professional unit involved herein, it would be giving implicit recognition to the right of the other unrepresented professionals to individually choose in which existing bargaining unit they desired to be included. The Commission is satisfied that the self-determination vote provided professional employees by Section 111.70(4)(d)2.a. was not intended to be utilized in such a piecemeal fashion. Because there is no petition herein seeking a unit determination or representation election among all the remaining unrepresented professional employees, the Commission has taken no action with regard to the position of television director other than to exclude said position, along with other professional positions, from the non-professional unit found appropriate for purposes of collective bargaining.

Secretary to High School Principal

The Petitioner contends that Susan Brown, secretary to the high school principal, is a confidential employee because she has access to,

6/ See, Milwaukee Board of School Directors, (11206-A) 8/73 (radio producer with bachelor's degree in communication arts held professional).

7/ Ibid (by implication).

and types supervisory evaluations of teachers and non-professional personnel and because of the business manager's testimony that she might have access to bargaining proposals from the Board of Education. The evaluations noted are not "confidential" materials in the sense that term is used in MERA. Furthermore, the possible access that Brown has to sensitive labor management documents has not been shown to be either an integral part of her work or something of sufficient concern to the Municipal Employer to lead it to request exclusion of Brown. The record therefore does not support the view that Brown is a confidential employee. She shall therefore be eligible to vote.

Secretary to District Administrator

Petitioner bases its contention that Janet Martin is confidential on the sole fact that she is the secretary to the District Administrator. The parties, by stipulation, agreed that Jean Benka, the bookkeeper, should be ineligible as a confidential employee. In an employer this size, it is quite possible that confidential correspondence and filing could be channeled solely to Benka to avoid any prejudice to the Municipal Employer. In any event, here again, the Municipal Employer does not claim that Martin is confidential, and the Commission finds no basis in the record to conclude that she is. Janet Martin shall therefore be eligible to vote.

Less Than Full Week Employees

Petitioner contends that two of the Municipal Employer's five part-time study hall aides, Joanne Gruber and Karen Wink are casual and lack a community of interest with the balance of the unit because, unlike the other employees, they do not work five days per week (but rather only three and two, respectively); because they do not work even half of a normal work week (but rather only eight and twelve hours per week, respectively); and because the Employer has a policy that differentiates employees holding positions requiring less than 600 work hours per year from the others for pension and life insurance eligibility purposes.

Gruber and Wink are clearly not casual employees. They work their scheduled days and hours each week throughout the students' school year. Several other employees in the unit work only during the school year rather than 12 months, as well. The Commission has often held that if an employee is regularly employed, he or she has a definite interest in the wages, hours and working conditions governing his employment regardless of the number of hours worked by the employee unless the Commission is presented with special circumstances indicating otherwise. ^{8/} Here, the only distinction besides hours and days of work, cited by the Petitioner is the Board policy requiring 600 hours per year of work for pension and life insurance eligibility. The record indicates, however, that such policy has been applied so as to provide Wink and Gruber with those benefits notwithstanding that they work less than 600 hours per year. Thus, they received the same fringe benefits paid to all but employees working at least seven hours per day, five days per week. In any event, the Commission has not been presented with specific circumstances showing that Gruber and Wink lack a definite interest in the bargaining unit's wages, hours and working conditions. Therefore, they are eligible to vote in the election.

8/ See, e.g., Kenosha School District #1, (11293) 9/72.

The Municipal Employer is hereby requested to supply an updated eligibility list to the Commission and the Petitioner within ten (10) days after the date of this Direction.

Dated at Madison, Wisconsin this 12th day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney

Morris Slavney, Chairman

Herman Torosian

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