

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
ARROWHEAD SCHOOL DISTRICT : Case IV
 : No. 24611 ME-1668
 : Decision No. 17213-B
Involving Certain of Its Employees :
Sought to be Represented by :
 :
ARROWHEAD UNITED TEACHERS' :
ORGANIZATION, WEAC, NEA :
 :

Appearances:

Mulcahy & Wherry, S.C., Attorneys, by Mr. Robert W. Mulcahy,
811 East Wisconsin Avenue, Milwaukee, Wisconsin 53202
appearing on behalf of the Municipal Employer/Petitioner.
Ms. Judith Neumann, Staff Counsel, Wisconsin Education
Association Council, P. O. Box 8003, Madison, Wisconsin 53708
appearing on behalf of the Organization.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER CLARIFYING BARGAINING UNIT

Arrowhead School District having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify a previously certified 1/ bargaining unit consisting of certain employees in the employ of said Municipal Employer; and hearing on said petition having been held on December 3, 1979, at Pewaukee, Wisconsin before Examiner Christopher Honeyman; the Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Arrowhead United Teachers' Organization, W.E.A.C., N.E.A., hereinafter referred to as the Association, is a labor organization requesting employees for purposes of collective bargaining, and has its offices at 212 Hazel Lane, Hartland, Wisconsin.
2. That Arrowhead School District, hereinafter referred to as the District, is a Municipal Employer and has its offices at North Avenue, Hartland, Wisconsin.

1/ Decision No. 17213, 8/79.

3. That following an election conducted by it, the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, on August 30, 1979, certified the Association as the exclusive collective bargaining representative of

All full-time and regular part-time professional employees of the District, excluding the District Administrator, supervisors, managerial and confidential employees, non-professional employees, per diem substitutes, and all statutorily excluded employees.

4. That the Association claimed at the time of its petition for election leading to its certification above noted that teacher interns should have been included in the bargaining unit and have been eligible to vote in that election; that the District opposed their inclusion; that thereupon the District and Association agreed that the question of unit eligibility of teacher interns would be deferred until after the election, and that interns working at the time of the election could vote subject to challenge by any party; and that, pursuant to this agreement, the District filed its petition for unit clarification herein on October 5, 1979.

5. That in the instant proceeding the Association seeks to include in the existing collective bargaining unit without a separate election, teacher interns, employed by the District; and that the District opposes such inclusion, contending that teacher interns are primarily students and should not be included in any bargaining unit, and further that teacher interns have no community of interest with the teachers and other related professional employees who comprise the existing unit herein.

6. That teacher interns in the District's employ are temporary employees but are not casual employees; and that teacher interns do not have a community of interest with all full-time and regular part-time professional employees in the employ of the District, the unit presently represented by the Association.

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

CONCLUSIONS OF LAW

1. That teacher interns in the District's employ are municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That since teacher interns do not share a community of interest with professional employees of the District, which employees are presently represented by the Association, The Wisconsin Employment Relations Commission, pursuant to Section 111.70(4)(d), will not include the teacher interns in the unit presently represented by the Association.

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

ORDER

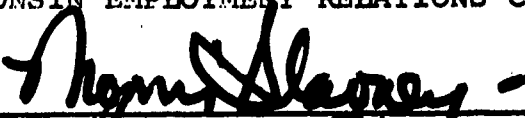
That the appropriate collective bargaining unit herein be, and the same hereby is, clarified by the exclusion of teacher interns, and that said unit be described as follows:

All full-time and regular part-time professional employes of the District, excluding the District Administrator, supervisors, managerial and confidential employes, non-professional employes, per diem substitutes, teacher interns, and all statutorily excluded employes.

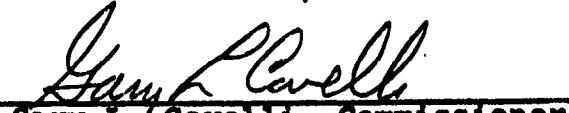
Given under our hands and seal at the City of Madison, Wisconsin this 12th day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
CLARIFYING BARGAINING UNIT

This case is a case of first impression on the question of unit inclusion or exclusion of teacher interns. 2/ The District is a high school district which for a period of approximately one year was conjoined with a number of elementary school districts, and was subsequently severed again. The Association's petition for election was filed when the District reverted to high - school - only status, and the issue of unit inclusion or exclusion of teacher interns was deferred past the election to this case: the parties agreed that interns working at the time of the election could be challenged at the election (though an oversight, none were, but their votes would not have affected the outcome of the election).

The District has been utilizing interns since the 1973-74 school year consistently, but in varying numbers; the total to the end of the 1979-80 year will be 61. Each works for exactly one semester, and a position set aside for interns is therefore held by 2 individuals in any given year. The subjects in which they are used vary from year to year in accordance with availability of interns in certain fields, qualified teachers in those fields (the District avers that it is "choosy" in its hiring, and has at times utilized interns to fill in until a worthy regular applicant appeared) and changing student preferences for certain optional subjects. In the current year 13 interns are being used. Two are teaching math; three are in art; 3/ and eight are in physical education. As each works for only one semester the number of positions is half these numbers, except in art. Each is paid a stipend of \$2,000, gets five days' sick leave and no other benefits. The District has hired eighty-nine full and part-time regular teachers since 1973-74; five full-timers and two part-timers previously served as interns. There is consequently a low expectation of continuing employment, which according to record testimony is matched elsewhere among the 100-odd districts which use interns.

All of the interns are supplied by the Wisconsin Improvement Program. (WIP), a program administered for this purpose by the University of Wisconsin, with cooperation from the State Department of Public Instruction, other colleges and of course school districts. WIP sends the District one applicant for each position, and the District interviews them but seldom rejects one. (Record testimony conflicts as to whether they have accepted 75% of WIP's applicants or all except one). There have been no discipline incidents involving them, but it appears the District at least assumes it has the right to discipline interns. There is no special formal training given the interns while employed by the District; they attend the same orientation and inservice as new regular teachers, although each has a "cooperating teacher," who is supposed to act as a mentor and as an evaluator for the intern's college. The degree to which cooperating teachers, some of whom have classes that coincide with their interns' actually see them teaching in some cases and substantial in others. In addition supervising instructors from the colleges visit the District, with no

2/ The District's petition included a separate question with respect to inclusion or exclusion of a school nurse, but the petition was withdrawn with respect to that issue at the hearing.

3/ See below re: the odd number.

consistent pattern. One, who had four interns at once in the phys. ed. department at the District, spent 2 1/2 days on the premises in 1979. The interns continue to be registered as students and pay tuition during their semester of internship, but they take no college courses during that time and their sole academic responsibility is the day-by-day work of the intern. Some interns have been asked to do extra lunchroom supervision, for which they are paid, and at least one has done extra-curricular sports supervision without the extra pay that regular teachers receive for this.

As for the work itself done by the interns, there is little difference between them and regular teachers at the District, except that they are assigned approximately four classes and one or two supervision periods (study halls, etc.) per day compared to a regular teacher's six classes and one study hall. Their hours are the same, so the interns have somewhat more preparation time. The District has allowed interns to interview for jobs elsewhere on working time, unlike regular teachers; and one art intern has been "loaned out" for three to six periods a week to an elementary district, at, her own request, during her preparation time. No charge was made to the elementary district for this service. The interns do not teach in tandem with regular teachers. Since they are not certified, they have an "intern teaching license", but this places no restrictions on their work and in fact the District concedes that it is using them in the same manner as regular teachers except as noted above: The Administrator testified that the District's first purpose in having interns is to teach the students and that from the District's point of view the goal of helping the interns become trained is secondary. In the current year the four phys. ed. positions held by the eight interns is nearly half the phys. ed. staff; there are 5 regular teachers plus the department chairman, a stipulated supervisor. Counting the difference in number of classes per day, therefore, about one-third of the actual phys. ed. teaching is done by interns; in the other departments affected the proportion is much less. In 1978-79 the District hired a full-time math teacher to replace one intern position, and in the fall semester of 1980, being unable to find two qualified art interns, it hired on a part-time regular teacher on a temporary basis, to be replaced by an intern for the spring semester. The parties differed as to whether that temporary regular teacher was in the unit, but that issue is not before us.

WIP appeared essentially as a party in interest, and opposes inclusion in the unit. A WIP official contended, in testimony, that this would lead to decreased use of the program, and pointed to a section in WIP guidelines, which requires that interns be withdrawn from a district in the event of a work stoppage. The \$2,000 paid by the District is the amount suggested by WIP, but districts are free to pay more if they wish.

The District takes the position that the interns are "temporary/casual", that they are primarily students, and that they should not be considered employees with collective bargaining rights. The District pointed to the fact that the interns have no reasonable expectation of hire as regular teachers and relatively short and fixed-term employment, and argued that they could have little or no input in the bargaining process in support of a contention that even if they be found employees under MERA the interns should not be included in the existing unit.

The Association contends that the interns are used as teachers, that they hold the equivalent of regular teaching positions and that the District has substituted interns for teachers and vice versa. The Association argues that the interns are temporary, but not casual, employees, and that the similarity of hours, work and working conditions gives them a community of interest with regular teachers. The Association further claims that it has a legitimate interest in having its labor agreement govern all bargaining-unit work, and argues that the Commission's anti-fragmentation policy joins, with the other factors cited, to compel the inclusion of the interns in the existing bargaining unit.

We have previously found temporary employees to be employees covered under MERA and to have the same rights as to collective bargaining as other municipal employees. See Madison Metropolitan School District, Dec. Nos. 13735-B (8/78), 14161-A (1/77), also City of Appleton, Dec. No. 16090-A (9/78), Wauwatosa Board of Vocational and Adult Education, Dec. No. 8158 (8/67).

We find no reason to conclude that intern teachers at this District are not employees within the meaning of MERA. In a nutshell, they are employed by the District and they perform duties performed by regular teachers, and it is obvious that the District's primary purpose in employing them is the same as its primary purpose in employing teachers - to teach the students. The cases cited above clearly lend support to the proposition that employees hired for a period even less than one semester may have bargaining rights; cf. Dane County, Dec. No. 16946 (4/79).

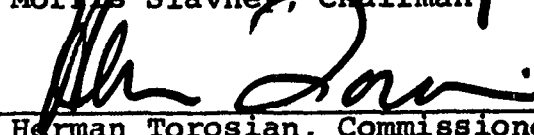
We do not agree with the position of the District that merely because the interns are "primarily students" they should lose all rights to organize and bargain collectively with an entity with whom their relationship is essentially one of employer and employee. We do, however, agree with the District, contrary to the Association, that the interns have no community of interest with the regular teachers. While they perform similar work under similar conditions, the aspirations of the teachers, as a group, are presumably directed toward a career-length employment; but the interns, regardless of the purposes for which the District hires them, can be expected to have interests centering on their opportunities for learning, training, practice and eventual hire elsewhere, and their concerns in collective bargaining would logically focus on elemental and short-term subjects.


Dated at Madison, Wisconsin this 12th day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner