

STATE OF WISCONSIN	:	CIRCUIT COURT	:	WAUKESHA COUNTY
ARROWHEAD UNITED TEACHERS ORGANIZATION,	:		:	
	:	Petitioner,	:	
vs.	:		:	Case No. 80CV1626
WISCONSIN EMPLOYMENT RELATIONS COMMISSION,	:		:	Decision No. 17213-B
	:	Respondent.	:	

DECISION

The above-entitled matter comes before the Hon. Harold J. Wollenzien, Circuit Court Branch 5, by way of a petition for review of an administrative decision, pursuant to Wisconsin Statutes, section 227.20.

The petitioner, Arrowhead United Teachers Organization, (AUTO), is represented by Attorney Judith Newmann of the Wisconsin Education Association Council. The respondent, Wisconsin Employment Relations Commission, (WERC) is represented by Assistant Attorney General John D. Niemisto. The Arrowhead Union High School District is represented by Attorney Robert W. Mulcahy, of Mulcahy & Wherry, by filing an amicus curiae brief with the court.

Prior to an election conducted by the WERC, the District and AUTO stipulated to the following bargaining unit:

"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." (Joint Exhibit #1, paragraph 18.)

Although the parties discussed inclusion of the interns, they could not reach agreement on the matter. (Transcript p. 115.) Therefore, the names of the interns were included on the eligibility list for the election, but the employer retained the right to challenge those votes. (Joint Exhibit #1, paragraph 19.)

The election was held on or about August 30, 1979, at which time AUTO was certified as the exclusive bargaining representative for the aforementioned unit. (Petition, paragraph 5.) On October 5, 1979, the District filed a petition for unit clarification with the WERC pursuant to the election stipulation. (Joint Exhibit #1, paragraph 19.)

Following a hearing on this petition held before Examiner Christopher Honeyman of the WERC, on December 3, 1979, a decision was rendered. The Examiner's decision, dated June 12, 1980, held that although the teacher interns are employees under the Municipal Employment Relations Act, (MERA, Wis. Stats. sec. 111.70(1)(b)), they do not share a community of interest with professional employees in the unit as required in Wis. Stats. sec. 111.70(4)(d). Therefore, he clarified the unit by expressly excluding teacher interns.

Examiner Honeyman found, and the Commission ordered, that the bargaining unit be described as:

"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, teacher interns, and all statutorily excluded employees." (Added language is underlined.)

The commission supplied the following reasoning for their decision:

"(T)he 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." (At page 6.)

Therefore, the Commission found no community of interest based on the differing concerns which interns and teachers would have in collective bargaining.

The School District disagrees with the WERC decision, but only as to the status of the interns. The District argues that the interns should be considered casual, rather than temporary employees. If the interns were classified as casual employees, they would not qualify as "municipal employees" and, therefore, would not come under the control of MERA.

The Union, on the other hand, disagrees with that part of the decision which held that the interns do not share a community of interest with the regular teaching staff. The Union argues that "the Commission as a matter of law had to conclude that interns shared a community of interest with all other teaching employees and belonged in the same bargaining unit." (Petitioner's Brief in response to District's and Respondent's statements of position, page 1.)

The Union bases its argument on the fact that the Commission found the interns to be municipal employees, performing work similar to that done by the regular teaching staff.

In view of the fact that the School District and AUTO object to alternate conclusions of law, it is necessary to review the entire decision. The issues to be considered are:

(1) Whether the interns qualify as municipal employees pursuant to Wis. Stats. sec. 111.70(1)(b), so as to come under the auspices of the Municipal Employment Relations Act; and

(2) Whether the interns should be included in the existing bargaining unit on the basis of community of interest and/or the anti-fragmentation mandate as found in Wis. Stats. sec. 111.70(4)(d)2.a.

I STATUS

In determining whether the interns are entitled to the benefits bestowed by the Municipal Employment Relations Act, it must first be found that they are municipal employees. Wisconsin Stats. sec. 111.70(1)(b) defines a "municipal employee" as "any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employee."

A "municipal employer" is defined in subsection (1)(a) to be "any city, county, village, town, metropolitan sewerage district, school district, or any other political subdivision of the state which engages the services of an employee. . ." (emphasis added.)

The above definitions are extremely broad and, if read literally, would extend the right to organize to most persons performing services for municipalities or their political subdivisions. Such an interpretation would include interns within the definition of "municipal employees" and thereby bring them within the auspices of the Municipal Employment Relations Act.

Additionally it has been noted that "the application of the municipal employment law (sec. 111.70, Stats.) is one of the areas of the law requiring expertise." Milwaukee v. WERC, 43 Wis 2d 596, 601 (1969). Therefore, "the construction and interpretation of a statute adopted by the administrative agency charged with the duty of applying the law is entitled to great weight." Milwaukee, supra, at 601, quoting Cook v. Industrial Comm, 31 Wis 2d 232, 240 (1966).

The WERC has adopted the broad interpretation of the terms. In Wauwatosa Driver Education Teachers Association (8158), 8/67, the Commission noted:

"The Vocational Board is a municipal employer, and, therefore, the issue as to whether the driver education teachers are employees within the meaning of the Wisconsin labor relations statutes must be determined by interpreting the Municipal Employer-Municipal Employee Labor Relations Law, Sec. 111.70 of the Wisconsin Statutes. The term "municipal employee" is defined in Sec. 111.70(1)(b) as 'any employee of the municipal employer . . .' It is obvious, therefore, that the driver education teachers are employees within the meaning of said Section, regardless of the 'temporary,' 'casual,' 'seasonal,' 'occasional,' or 'regularity' of their employment." (At page 5.)

Given this interpretation it is obvious that the interns do qualify as "municipal employees" pursuant to the Municipal Employment Relations act (MERA).

II. COMMUNITY OF INTEREST

Since it has now been determined that the interns are "municipal employees," and that they come within the purview of the Municipal Employment Relations Act, it is then necessary to consider the community of interest aspect. However, in order to be included in the unit comprised of the regular teaching staff the interns must be found to share a community of interest.

In Madison Teachers, Inc. (14161-A, 6746-C) 1/77, the WERC found a sufficient community of interest based on the "similarity of job functions, wages, hours and conditions of employment." (At page 5.) In considering these criteria, they must each be examined carefully in the case at bar in order to determine if they are similar or dissimilar in each of the areas which may be used to distinguish between teachers and interns.

A. JOB FUNCTIONS

In the area of job functions it can be noted that the interns have a reduced class load. They teach fewer academic classes while sometimes carrying more supervisory activities such as homerooms or lunch periods; thus it would appear to be dissimilar with respect to job functions.

B. WAGES

This is one area in which there are glaring dissimilarities between teachers and interns. Those factors which are most notable are:

- (1) The wages of the interns are much smaller than those of the regular staff;
- (2) The only benefit received by the interns is five paid sick days; and
- (3) The value of the stipend is further reduced since the interns must pay their respective schools for the credits they receive for interning.

C. HOURS

While interns and teachers are both assigned the same hours, the interns have a certain degree of flexibility not available to the teachers. There are two situations where this is most obvious:

- (1) Art interns are allowed to spend some time in the elementary school in order to obtain a broader certification; and
- (2) Interns are given release time in order to interview for employment in other school districts. Neither of these options are available to the regular teaching staff.

D. CONDITIONS OF EMPLOYMENT

There are differences in the area of working conditions as well. It is possible to distinguish between teachers and interns since:

- (1) Interns are not subjected to the same employment process at the time of hiring, (i.e., most of the interns suggested for placement by the Wisconsin Improvement Program are accepted by the School District);
- (2) Interns are not affected by fluctuations in student enrollments which could result in staff reduction; and
- (3) Interns carry a reduced workload which allows them more time to prepare for their classes.

This court is satisfied from the foregoing and the record in this case that the WERC did not abuse its discretion in its decision of finding no community of interest and the court affirms that portion of the Commission's decision. However, the Union raised one other issue which must be addressed on review. The Union argues that the Commission has violated the anti-fragmentation mandate found in Wis. Stats. sec. 111.70(4)(d)2.a., which reads:

"The commission shall determine the appropriate unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable . . ."

(Emphasis added.)

The language is not absolute and is tempered by subsection (6) of the statute which provides:

"The public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. Accordingly, it is in the public interest that municipal employees so desiring be given an opportunity to bargain collectively. . ."

(Emphasis added.)

There is nothing in the record to indicate that the interns seek to be included in the bargaining unit. In actuality, it appears from the testimony of Dr. Peter Burke, Acting Executive Secretary for Wisconsin Improvement Program, that interns would prefer to be non-participants if any job action were to occur. (Transcript, page 75.)

It is, therefore, the decision of this court that the Commission has not violated any statutory mandate by its decision, and the Commission's decision is hereby affirmed in all respects, pursuant to Wisconsin Statutes, section 227.20(2).

Dated at Waukesha, Wisconsin, this 3rd day of July, 1981.

BY THE COURT:

Harold J. Wollenzien /s/
Circuit Judge