STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO	Case CXX No. 24996 ME-1713 Decision No. 17224-A
Involving Certain Employes of	
MILWAUKEE COUNTY	

Appearances:
Podell, Ugent & Cross, Attorneys at Law, by Mr. Alvin R. Ugent, appearing on behalf of the Union.
Mr. Patrick J. Foster, Principal Assistant Corporation Counsel, Milwaukee County, appearing on behalf of the County.

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

Milwaukee District Council 48, AFSCME, AFL-CIO having, on July 27, 1979, filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to clarify an existing collective bargaining unit consisting of certain employes of Milwaukee County; and hearing in the matter having been held in Milwaukee, Wisconsin on December 3, 1979 and January 24, 1980 before Examiner Douglas V. Knudson, who was appointed Examiner by the Commission for the purpose of issuing a proposed decision, pursuant to Section 227.09(2), Stats.; and the Examiner, having considered the evidence and arguments of the parties, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization representing employes for the purposes of collective bargaining, and having its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin, 53208.

2. That Milwaukee County, hereinafter referred to as the County, is a municipal employer, having its offices at Milwaukee County Courthouse, 901 North 9th Street, Milwaukee, Wisconsin, 53233.

3. That since December 10, 1965, the Union has, on the basis of an election conducted by the Commission, been the exclusive representative for the purposes of collective bargaining of the following unit of employes: "all regular full-time and regular part-time 1/ employes of the County of Milwaukee, excluding fire fighting classifications and other craft employes, registered nurses and other professional employes, confidential employes, supervisors, department heads and exempt positions."

1/ Prior to the instant petition the parties have included under the collective bargaining agreement only those regular part-time employes who work twenty or more hours per week.

4. That the employes at issue herein hold job classifications which are already covered by the existing collective bargaining agreement, i.e., Food Service Worker I, Food Service Worker II, Custodial Worker I, Custodial Worker II, and, Hospital Attendant I; that said employes are regularly scheduled to work, usually for approximately nineteen hours per week; that said employes perform basically the same work, work in the same areas, wear the same uniforms, and, have the same supervisors, as do employes covered by the collective bargaining agreement who hold the same job classifications; that the employes who work less than twenty hours a week do not receive fringe benefits, advance on the contractual salary schedule, or, have civil service status with respect to hire and termination, as do the bargaining unit employes; and, that, while the annual turnover rate of the employes working less than twenty hours per week has been very high, some of those employes have been employed continuously for more than two years.

5. That, during their negotiations which culminated in the current collective bargaining agreement, the parties never discussed the subject of applying said agreement to employes working less than twenty hours a week.

Based on the foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That the employes at issue herein who work less than twenty hours a week are regular part-time employes.

2. That, because the existing bargaining unit already includes regular part-time employes working twenty or more hours per week, and further, because the current collective bargaining agreement already covers the job classifications occupied by the employes at issue herein who work less than twenty hours a week, said employes should be included in the existing bargaining unit.

Based on the foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER CLARIFYING BARGAINING UNIT

That the individuals who are employed on a regular part-time basis for less than twenty hours per week in the job classifications of Food Service Worker I, Food Service Worker II, Custodial Worker I, Custodial Worker II, and, Hospital Attendant I shall be, and hereby are, included in the bargaining unit described above in Finding of Fact No. 3.

Dated at Madison, Wisconsin this 22nd day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Douglas V. Knudson
Douglas V. Knudson, Examiner

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

On July 27, 1979, the Union filed a petition requesting the inclusion of certain part-time hourly-paid employes working less than twenty hours per week in the existing certified collective bargaining unit, which is described in Finding of Fact No. 3. The employes at issue herein are in the following classifications which are already included in said bargaining unit; Food Service Worker I, Food Service Worker II, Custodial Worker I, Custodial Worker II and Hospital Attendant I. However, the parties previously have excluded said employes from the bargaining unit because they normally are scheduled to work less than twenty (20) hours per week, which is the standard the parties have utilized in the past to determine bargaining unit eligibility. There is no evidence in the record to show that the Commission either was aware of, or had approved of, such a standard.

The County contends that the employes at issue herein are casual part-time employes who lack a right to continued employment, as evidenced by the fact that the employes are on emergency appointments and have no civil service status with respect to their hire or termination. Further, said employes receive no fringe benefits and do not advance on the salary schedule as do regular employes.

The record clearly reveals that the contested employes are scheduled to work on a regular basis, usually from nineteen (19) to nineteen and three-quarters (19 3/4) hours per week, although some of the employes are scheduled for less hours. Said employes perform basically the same work, work in the same areas, wear the same uniforms, and, have the same supervisors as do bargaining unit employes with the same job classifications.

In 1976 or 1977, the County imposed a freeze on the hiring of employes to fill regular civil service positions, but allowed certain of its operating departments to hire part-time employes on an emergency appointment basis, to work less than twenty hours per week. At the time of hearing in this matter, the County was employing approximately 235 individuals on this basis. The County's civil service rules limit emergency appointments to a period of six months, unless extensions are approved by the County. While the annual turnover rate among the employes working less than twenty hours a week has been high, as much as sixty percent (60%) in some departments, there is no evidence in the record to show that any of those employes were terminated on the basis of having been employed for more than six months. Conversely, some of those employes have been employed continuously for more than two years in that status.

The County's Medical Complex annually recruits nursing students, who are in their last year of school, to work up to twenty hours a week in the classification of Hospital Attendants I, and, in the fall of 1979, the County hired twenty-five such nursing students. While said students normally only work one year until they graduate, they are regularly scheduled to work during that year.

Based on the nature of the work performed and the regularity of scheduling of the employes involved herein, the Examiner concludes that such employes are regular part-time employes, and therefore, they are entitled to representation under the Municipal Employment Relations Act. The Commission has consistently held that if an employe is regularly employed, the employe has a definite interest in the wages, hours and working conditions governing his employment, regardless of the number

of hours worked by the employe. 2/ The lack of civil service status and the absence of fringe benefits are not factors which alter the regular part-time status of the employes at issue herein.

Inasmuch as the parties have already included regular part-time employes working twenty or more hours per week in the bargaining unit, and, the employes at issue herein are regularly scheduled to work in job classifications which are covered by the collective bargaining agreement between the parties, the Examiner finds that the part-time employes at issue herein who regularly work less than twenty hours per week shall be included in the bargaining unit. However, since it is clear that the parties did not agree to cover said employes under their current collective bargaining agreement, which is to expire on December 31, 1980, this Order does not have the effect of automatically extending the coverage of that agreement to those employes.

Dated at Madison, Wisconsin this 22nd day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Douglas V. Knudson
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2/ See, e.g., Hartford Union High School (15745) 8/77; Kenosha School District (11293) 9/72.