

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
GERMANTOWN EDUCATION ASSOCIATION	:	Case VIII
Involving Certain Employes of	:	No. 23464 ME-1574
GERMANTOWN SCHOOL DISTRICT	:	Decision No. 17494
	:	

Appearances:

Mr. Dennis J. Eisenberg, Executive Director, Cedar Lake United Educators, appearing on behalf of the Petitioner.
Quarles & Brady, Attorneys at Law, by Mr. Michael S. McCauley, appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Germantown Education Association, through its agent, Cedar Lake United Educators, having filed a petition with the Commission requesting the Commission to clarify a voluntarily recognized bargaining unit consisting of teachers of Germantown School District; and on November 28, 1978, Germantown School District having filed a motion to dismiss and alternative motion for a separate election; and hearing on said petition and motions having been held on December 13, 1978, at Germantown, Wisconsin, before Examiner James D. Lynch; and 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 Direction of Election.

FINDINGS OF FACT

1. That Germantown Education Association, hereinafter referred to as GEA, is a labor organization representing employes for the purposes of collective bargaining and is affiliated with Cedar Lake United Educators, which has its offices at 2395 West Washington Street, West Bend, Wisconsin.
2. That Germantown School District, hereinafter referred to as the District, is a municipal employer with its offices at N104 W13840 Donges Bay Road, Germantown, Wisconsin.
3. That the GEA and the District are parties to a collective bargaining agreement, effective for the 1978-1980 school years, covering wages, hours and conditions of employment for certain professional employes, as stated in said agreement as follows:

300.00 RECOGNITION OF G.E.A. AS BARGAINING AGENT
FOR TEACHERS

The Board of Education herein recognizes the Germantown Education Association, an affiliate of the C.L.U.E., W.E.A.C. and the N.E.A., as sole and exclusive collective bargaining agent for the full-time employed, and written

contracted part-time, (sic) teachers of the Germantown School District (excluding: consultants, reading specialists, supervisors, principals, vice-principals, substitute teachers, central office personnel, non-professional staff, social workers, psychologists and any other personnel who spend more than 50% of their time in and/or on supervisory functions, excluding department heads).

4. That said collective bargaining agreement also provides as follows:

400.00 TEACHING CONTRACT

. . .

400.02 Effective Term of This Agreement

This Agreement shall be come (sic) effective on the first calendar day of the 1978-79 school year and shall be in full force and effect through close of business on the day immediately prior to the first calendar day of the 1980-81 school year. The Agreement shall be renewed automatically unless the GEA gives written notification of termination prior to January 1, 1980. The timetable for negotiation of a replacement for the terminated contract, including submission of proposals, shall be as negotiated by the Board and the GEA, with such negotiation to begin no later than February 15, of the last school year covered by this Agreement, provided that the salary schedule (Sec. 400.01 and App. A) and the calendar (Sec. 1000.04 and App. B) shall be re-opened for the 1979-80 school year, with bargaining to begin no later than April 5, 1979.

5. That in the instant proceeding GEA has requested the Wisconsin Employment Relations Commission to clarify the unit set forth above so as to include the positions of Reading Specialist, Social Worker and Psychologist in said unit; that prior to the scheduled hearing on said petition, the District filed a motion to dismiss and alternative motion for a separate election should the Commission order a unit clarification; that hearing on said petition and motions was conducted at Germantown, Wisconsin, on December 13, 1978, during the course of which the GEA offered to stipulate to an overall unit election should the Commission refuse to accrete said positions without an election; and that, during the course of the hearing, an issue arose as to the community of interest between the disputed classifications and existing members of the bargaining unit.

6. That all four of the collective bargaining agreements in effect between the parties since the 1972 school year contained recognition clauses which excluded the positions of Reading Specialist, Social Worker, and Psychologist from the bargaining unit; that during negotiations for the 1978-1980 collective bargaining agreement, the GEA proposed that the positions of Reading Specialist, Social Worker and Psychologist be included in the bargaining unit; the District rejected said proposal and the GEA dropped same; and that 6 to 8 employes occupy said disputed positions, compared to approximately 180 employes in the "teacher" unit.

7. That the position of Reading Specialist (1) generally develops and maintains a reading program for students throughout the District; (2) works with students approximately 3 to 4 percent of the time in that he/she tests students, diagnoses and prescribes corrective programs; (3) works with teachers approximately 33 to 50 percent of time in that he/she aids school staffs in developing reading instruction objectives, diagnoses a child's reading needs and assists teachers in grouping for instruction, helps teachers develop reading lessons at a child's instructional level, demonstrates methods and materials to teach reading skills in the classroom, acts as a resource person for the teacher's instructional needs, consults with multi-disciplinary teams (hereinafter referred to as M teams) composed of teachers and other professionals concerning placement and instruction of disabled readers, organizes and/or conducts in-service education programs for teachers, disseminates information regarding program development throughout the school system, aids the teacher in evaluating special instructional programs and works with teachers, in other similar activities; (4) is supervised by the Director of Instruction whereas teachers are supervised by their principals; all said supervisors are in turn responsible to the District Administrator; (5) is on a 205 day calendar year whereas teachers are on a 189 day calendar year; (6) currently earns from \$14,254 to \$19,246 per annum whereas teachers earn from \$10,260 to \$23,000 per annum; (7) receives similar health insurance, long term disability insurance, retirement, sick leave, personal leave, vacation and holiday benefits as do teachers; (8) receives additional life insurance and vision care not offered to teachers; and (9) is required to have a Masters Degree, like elementary counselors currently in the bargaining unit, whereas the remainder of teachers in the bargaining unit are solely required to have a Bachelors Degree to be hired.

8. That the position of Social Worker (1) generally attempts to reduce the social problems and needs of students throughout the District; (2) works with students approximately 20 percent of the time in that he/she helps children use special school and community services, provides individual and group therapy for and may receive self-referrals from students through the social work techniques of casework, group work, collaboration and crisis intervention; (3) works with teachers approximately 25 percent of the time in that he/she consults with teachers concerning the appropriate diagnosis of problems, serves on M teams, interprets to school personnel the effect of the child's environment on his behavior and cooperatively determines appropriate modifications, helps teachers understand the needs and problems of individual pupils and special groups of children and provides individual and group therapy for staff through the social work techniques of casework, group work, collaboration and consultation; (4) is, like elementary counselors in the bargaining unit, supervised by the Director of Pupil Services whereas other teachers are supervised by their principals; all said supervisors are in turn responsible to the District Administrator; (5) is generally on

a 205 day calendar year, except one Social Worker who is on a 195 day calendar year, whereas teachers are on a 189 day calendar year; (6) currently earns \$12,732 to \$19,969 per annum whereas teachers earn from \$10,260 to \$23,000 per annum; (7) receives similar health insurance, long term disability insurance, retirement, sick leave, personal leave, vacation and holiday benefits as do teachers; (8) receives additional life insurance and vision care not offered to teachers; and (9) is required to have 48 graduate credits and a practicum, like elementary counselors in the bargaining unit who are required to have a Masters Degree, 30 hours and a practicum or its equivalent, whereas other teachers in the unit are solely required to have a Bachelors Degree to be hired.

9. That the position of Psychologist (1) generally attempts to reduce the psychological problems of students throughout the District; (2) works with students approximately 20 percent of the time in that he/she diagnoses the social, emotional, adaptive, cognitive, behavioral, curricular and vocational needs and goals appropriate to a given child, screens, counsels and follows up on such diagnosis and administers and interprets intelligence and personality measures; (3) works with teachers approximately 25 percent of the time in that he/she consults with teachers, provides inservice of regular and special education staff, offers diagnostic and evaluative services in concert with other allied professionals and educational peers and serves on M teams; (4) is, like elementary counselors in the bargaining unit, supervised by the Director of Pupil Services whereas other teachers are supervised by their principals; all said supervisors are in turn responsible to the District Administrator; (5) is on a 205 day calendar year whereas teachers are on a 189 day calendar year; (6) currently earns from \$16,000 to \$18,000 per annum whereas teachers earn from \$10,260 to \$23,000 per annum; (7) receives similar health insurance, long term disability insurance, retirement, sick leave, personal leave, vacation and holiday benefits as do teachers; (8) receives additional life insurance and vision care not offered to teachers; and (9) is required to have 48 graduate credits and a practicum, like elementary counselors in the bargaining unit who are required to have a Masters Degree, 30 hours and a practicum or its equivalent, whereas other teachers are solely required to have a Bachelors Degree to be hired.

10. That the positions of Reading Specialist, Social Workers and Psychologist in the employ of the District are occupied by professional employes, who work with students and teachers in the support of the educational program of the District.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time teachers and professional employes in the employ of the Germantown School District, who work primarily with students and teachers in support of the educational program, including, but not limited to, full-time and written contracted part-time teachers, reading specialists, social workers and psychologists, but excluding supervisors, principals, vice-principals, substitute teachers, central office personnel, non-professional staff, and any other personnel who spend more than 50 percent of their time in and/or on supervisory functions, excluding department heads, constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

2. That a question of representation has arisen within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act among employes of the Germantown School District included in the bargaining unit as set forth in paragraph 1 hereof.

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

DIRECTION OF ELECTION

IT IS HEREBY 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 Directive among all regular full-time and regular part-time teachers and professional employes in the employ of the Germantown School District, who work primarily with students and teachers in support of the educational program, including, but not limited to, full-time and written contracted part-time teachers, reading specialists, social workers and psychologists, but excluding supervisors, principals, vice-principals, substitute teachers, central office personnel, non-professional staff, and any other personnel who spend more than 50 percent of their time in and/or on supervisory functions, excluding department heads, who are employed on December 11, 1979, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by the Germantown Education Association for the purposes of collective bargaining with Germantown School District on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

The GEA was voluntarily recognized by the District prior to 1972. 1/ The parties executed their first collective bargaining agreement in 1972. This agreement and three successor agreements covering the period from 1972-1980, including the current agreement, excluded the positions of Reading Specialist, Social Worker, and Psychologist from the bargaining unit. The GEA proposed that said positions be included in the bargaining unit during negotiations for the 1978-1980 collective bargaining agreement but dropped the proposal after it was rejected by the District.

In its petition the GEA requested to clarify the bargaining unit so as to include the positions of Reading Specialist, Social Worker and Psychologist. In support of its petition, the GEA avers that employes in said positions possess a substantial community of interest with members currently in the professional bargaining unit and are not supervisors and, as such, should be accreted to the bargaining unit without an election. The District filed a motion to dismiss and an alternative motion for an accretion election among employes in said positions should the Commission order a unit clarification. The District maintains that the GEA's petition should be dismissed because it is an invalid use of the unit clarification process and because employes in said positions do not share a community of interest with existing members of the bargaining unit. During the course of the hearing, the GEA offered to stipulate to an overall unit election, should the Commission refuse to accrete said positions without an election.

The Commission will not expand a voluntarily recognized collective bargaining unit without an election in the unit deemed appropriate where certain classifications of employes have been implicitly or explicitly excluded from the unit; a party involved in the recognition agreement opposes the proposed expansion; the original exclusion was not based on statutory grounds; the unit is not repugnant to the provisions of the Municipal Employment Relations Act and there has not been any intervening events which would materially affect the status of the affected employes. 2/ Where these conditions have been met, the Commission will recognize an overall unit if the voluntarily recognized union petitions for an election in an overall unit consisting of all represented and unrepresented professional employes, if the Commission deems the overall unit appropriate and if the union wins a majority of the eligible voters in the entire unit. 3/ In the alternative, the

1/ The record does not clearly establish the fact or date of the GEA's voluntary recognition but such facts are undisputed in the parties' briefs.

2/ City of Cudahy (12997) 9/74; Fox Valley Technical Institute (13204) 12/74; Milwaukee Board of School Directors (13134-A) 1/76; City of Rice Lake (Fire Department) (16413) 6/78.

3/ Fox Valley Technical Institute (13204) 12/74; River Falls Joint School District No. 1 (13804-A) 10/76; Amery Joint School District No. 5 (15793-A, 15794-A) 4/78.

Commission will recognize a residual unit if the union petitions for an election among a residual unit comprised of all unrepresented professional employes; the Commission deems the residual unit appropriate; and the union wins a majority of the eligible voters in the residual unit. If the voluntarily recognized union appears on the ballot in the residual unit election and a majority of the eligible voters vote for representation by said union, the Commission will merge the residual unit with the overall professional unit. 4/ The Commission will not, however, order an "accretion election," whereby some, but not all, of the unrepresented employes exclusively vote on their desire to accrete to an existing unit. 5/

The Commission is mandated by Section 111.70(4)(c)2.a. of the Municipal Employment Relations Act to avoid fragmentation of municipal bargaining units. In furtherance of this statutory policy, the Commission has held that professionals, whether certified or not by the Department of Public Instruction, who work primarily with students and teachers in support of the educational program, shall be included in a bargaining unit consisting primarily of teachers, absent special circumstances. 6/

From the record it would appear that the disputed positions comprise all of the remaining unrepresented professional employes working with students and teachers.

We are satisfied that all professional employes of the District who work primarily with students and teachers in support of the Educational program constitute an appropriate bargaining unit.

Normally the Commission will not entertain a petition for an election in a unit where any or all of the employes therein are covered by an existing collective bargaining agreement unless such a petition is timely filed. Where such an agreement exists, such petitions are deemed timely filed if filed within sixty days prior to the date on which the agreement may be reopened for the purpose of negotiating changes therein, or terminating same. 7/ The petition initiating the instant proceeding was filed on August 31, 1978. While it was untimely filed under the above policy, if we were to dismiss same, the GEA could immediately file a new petition, which filing would be timely. Therefore, in order to avoid a repetitive proceeding, we are directing an election in an overall unit. Should the employes in the unit select GEA as their bargaining representative,

4/ Fox Valley Technical Institute (13204) 12/74.

5/ Sheboygan Joint School District (12897) 7/74; Fox Valley Technical Institute (13204) 12/74; Manitowoc County (Health Care Center) (13894) 8/75.

6/ Tomahawk Unified School District No. 1 (12483-B) 8/77.

7/ City of Milwaukee (8622) 7/68.

said organization will have the right to bargain on a successor collective bargaining agreement for all such professional employes. The existing agreement shall remain in full force and effect through the close of business on the day immediately prior to the first calendar day of the 1980-1981 school year and shall only cover the employes presently covered.

Dated at Madison, Wisconsin, this 11th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner