

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

MONTELLO COUNCIL OF AUXILIARY PERSONNEL :

Involving Certain Employees of :

SCHOOL DISTRICT OF MONTELLO  
- - - - -

Case III

No. 24933 ME-1707

Decision No. 17829

Appearances:

Mr. James Yoder, Executive Director, South Central United Educators,  
207 West Cook Street, Portage, Wisconsin 53901, appearing on  
behalf of the Montello Council of Auxiliary Personnel.

Mr. Wayne Atkinson, President, Montello School Bus Drivers Association,  
148 Siesta Drive, Montello, Wisconsin 53949, appearing on behalf  
of the Montello School Bus Drivers Association.

Mr. Francis W. Murphy, Attorney at Law, Murphy & Salna, 234 1/2 W.  
Wisconsin Street, Portage, Wisconsin 53901, appearing on behalf  
of the School District of Montello.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Montello Council of Auxiliary Personnel having petitioned the Wisconsin Employment Relations Commission to conduct an election among certain employees of the School District of Montello, and a hearing on said petition having been conducted at Montello, Wisconsin on August 29, 1979 by James Lynch, Hearing Officer and the record having been closed on April 9, 1980 upon receipt of certain documentary evidence; and the Commission having considered the evidence and arguments of the parties, issued the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

1. That the Montello Council of Auxiliary Personnel, hereinafter referred to as the Council, is an employe organization and has its offices at 207 West Cook Street, Portage, Wisconsin.

2. That the Montello School Bus Drivers Association, hereinafter referred to as the Association, is an employe organization and has its offices c/o Wayne Atkinson, 148 Siesta Drive, Montello, Wisconsin; and that Wayne Atkinson is the President of the Association.

3. That the School District of Montello, hereinafter referred to as the District, is a municipal employer which exists to provide educational services to the inhabitants of the District; and that the District employs, among others, non-professional employes as bus drivers, mechanic, secretarial and clerical, aides and custodians; that, except for the bus drivers, all said non-professional employes are presently unrepresented for the purposes of collective bargaining; that all full-time bus drivers in 1977 selected the Association as their collective bargaining representative; and that, following its certification as a collective bargaining representative, the Association entered into a collective bargaining agreement with the District, covering said full-time bus drivers, which agreement, by its terms, was effective from August 23, 1977 through June 30, 1980.

4. That the instant proceeding was initiated on July 20, 1979 by a petition filed by the Council, wherein it requested the Wisconsin

Employment Relations Commission to conduct an election among all full-time and regular part-time non-professional employees of the District to determine whether said employees desire to be represented by the Council for the purposes of collective bargaining with the District with respect to wages, hours and working conditions; that during the course of the hearing, on August 29, 1979, the representative of the Association advised that, upon the expiration of the collective bargaining agreement covering the bus drivers, the Association would no longer claim to represent any of the employees of the District; and that, however, during the hearing the District contended that the collective bargaining agreement between the District and the Association, covering bus drivers, constituted a bar to a present election in a collective bargaining unit which included bus drivers.

5. That during the course of the hearing the parties stipulated that the position of Head Cook Supervisor, District Administrator's Secretary/Accountant, and Transportation/Building & Grounds Supervisor, occupied by June Norton, Evelyn Metcalf, and Raymond Kirkpatrick respectively, should be excluded from the unit; and that, however issues arose as to the inclusion of the following positions in the bargaining unit:

<u>Position</u>	<u>Occupant</u>	<u>District Contention</u>	<u>Assn. Contention</u>
High School Secretary	Marvis Schultz	Confidential	Not Confidential
Head Custodian	Harold Schleicher	Supervisory	Not supervisory
Mechanic	Keith Cebery	Individual contract to June 30, 1980	Does not effect unit placement
Substitute Bus Drivers	Varied	Casual	Should be in unit

6. That the High School Secretary performs secretarial duties for Roger Klug, the High School Principal; that said Secretary types, files, takes tickets, collects money from ticket sales, and receives registration and lunch reports; that she types teachers evaluations, which subsequently are signed by the teachers; that the Secretary plays no role in preparing materials relative to collective bargaining nor does the incumbent of the position participate in, or is she privy to, meetings at which agents of the District evaluate personnel or recommend employe action, that the Secretary occasionally types letters for the Principal relating to problems occurring within the high school relating to the teacher collective bargaining agreement, which duty consumes approximately one percent of her time; and that said Secretary also types responses to employe's grievances, which are given to employes.

7. That the record made during the course of the hearing with regard to the duties and responsibilities of Head Custodian Harold Schleicher is insufficient to such a degree that the Wisconsin Employment Relations Commission is unable at this time to make a determination as to whether Schleicher is a supervisor or an employe within the meaning of the Municipal Employment Relations Act.

8. That Mechanic Keith Cebery was employed by the District pursuant to an individual employment contract, which by its terms expires on June 30, 1980; and that the District employs various individuals as Substitute Bus Drivers, who are not regularly employed, but who are employed on a casual basis, and that therefore the Substitute Bus Drivers do not have sufficient community of interest to be included among the eligibles in the collective bargaining unit involved herein.

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

#### CONCLUSIONS OF LAW

1. That all full-time and regular part-time non-professional

employees in the employ of the School District of Montello, including bus drivers, mechanic, secretarial and clerical, aides, cooks, and custodians, and excluding managerial, supervisory, confidential and casual employees, constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

2. That the duties and responsibilities of the position of High School Secretary are such that the occupant thereof is an 'employee' within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

3. That since the collective bargaining agreement covering the bus drivers in the employ of the School District of Montello will expire on June 30, 1980, and since the individual employment contract between Mechanic Keith Cebery and the School District of Montello will also expire on said date, neither said collective bargaining agreement, nor said individual employment contract, presently bars the determination of the question of representation which has arisen among all full-time and regular part-time non-professional employees in the employ of the School District of Montello, including bus drivers, mechanic, secretarial and clerical, aides, cooks, and custodians, and excluding managerial, supervisory, confidential and casual employees, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

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

DIRECTION OF ELECTION

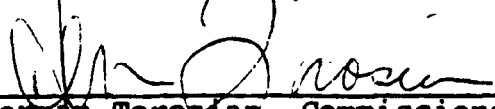
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission among all full-time and regular part-time non-professional employees in the employ of the School District of Montello, including bus drivers, mechanic, secretarial and clerical, aides, cooks and custodians, and excluding managerial, supervisory, confidential and casual employees, who were employed on May 22, 1980, except such employees as may prior to the election quit their employment or be discharged for cause for the purpose of determining whether said employees desire to be represented by the Montello Council of Auxiliary Personnel for the purposes of collective bargaining with the School District of Montello with respect to wages, hours and conditions of employment.


Given under our hands and seal at the  
city of Madison, Wisconsin this 22nd  
day of May , 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 DIRECTION OF ELECTION

The instant proceeding was initiated on July 20, 1979 by a petition filed by the Montello Council of Auxiliary Personnel, wherein it sought a representation election among all otherwise eligible non-professional employees in the employ of the District. Except as to issues arising with respect to the confidential status of the High School Secretary, the supervisory status of the Head Custodian, and the casual status of substitute Bus Drivers, the District did not object to the unit claimed to be appropriate by the Council. However, during the course of the hearing, held on August 29, 1979, the District, in effect, contended that an existing agreement between the Montello Bus Drivers Association and the District, which agreement would expire June 30, 1980, and which agreement did not contain a date on which it could be reopened for bargaining on a successor agreement, constituted a bar to a present determination of bargaining representative. The District also contended that an individual employment contract with the Mechanic, also terminating on June 30, 1980, raised a similar issue.

It should be noted that the record in the instant matter was not closed until sometime in April, 1980, upon receipt of documents relating to Substitute Bus Drivers, which data was forthcoming from the District since the date of the hearing. The two agreements described above are about to expire, 1/ and therefore we are satisfied that by the time the election is conducted herein said agreements will not impede the negotiation of a new collective bargaining agreement should said non-professional employees select the Council as their bargaining representative.

We are satisfied that the High School Secretary is not a confidential employee. At the most the occupant of the position spends only a de minimus amount of her time in performing confidential duties. Therefore the position, and the incumbent thereof, is included in the bargaining unit. As noted in the Findings, in our opinion the record is insufficient for the Commission to make a determination as to the inclusion or exclusion of the position of Head Custodian from the unit. The occupant of the position shall be permitted to vote by challenged ballot, and the Commission will subsequently conduct a hearing to take additional evidence in order that the Commission may properly rule on the supervisory status of the position.

The record establishes that the Substitute Bus Drivers are not employed on a regular part-time basis, but rather on a 'call' basis when

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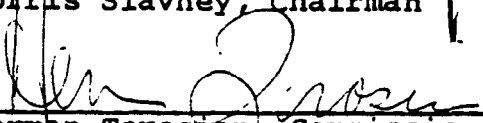
1/ We are not inferring that the individual employment contract would constitute a bar to a representation election.

regular Bus Drivers are absent. We therefore conclude that said employes are casual employes, and are excluded from the employes eligible to vote in the election directed herein. 2/

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

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2/ City of Brillion, (12015) 8/74.