

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
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RICHLAND CENTER COUNCIL OF AUXILIARY : Case III
PERSONNEL/SOUTHWEST TEACHERS UNITED : No. 25583 ME-1783
 : Decision No. 17945
Involving Certain Employees of :
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 :
RICHLAND SCHOOL DISTRICT :
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Appearances:

- Mr. Paul R. Bierbrauer, Executive Director, South West Teachers United, Route 1, Barber Avenue, Livingston, Wisconsin 53554 appearing on behalf of the Petitioner.
- Mr. David E. Shaw, Mulcahy & Wherry, Attorneys at Law, S.C., 110 East Main Street, Madison, Wisconsin 53703, appearing on behalf of the School District.
- Mr. Darold Lowe and Mr. James Ellingson, Representatives, for American Federation of State County and Municipal Employees, Council 40, 5 Odana Court, Madison, Wisconsin 53715, appearing on behalf of the First Intervenor.
- Mr. Francis Mueller, an Individual, for certain employees of the Richland School District, 125 S. Central Avenue, Richland Center, Wisconsin 53581 appearing on behalf of the second Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTIONS

Richland Center Council of Auxiliary Personnel/South West Teachers United having, on January 9, 1980, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the Municipal Employment Relations Act, to determine what, if any representation certain employees in the employ of Richland School District desired for the purposes of collective bargaining; and hearing in the matter having been conducted at Richland Center, Wisconsin on February 8, 1980, before William C. Houlihan, an Examiner of the Commission; and during the course of said hearing American Federation of State, County and Municipal Employees, Council 40, as well as Mr. Francis Mueller, an individual claiming to represent certain employees involved, having been permitted to intervene in the instant matter; and the Commission, having reviewed the evidence as well as the briefs of the parties, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Richland Center Council of Auxiliary Personnel/South West Teachers United, hereinafter referred to as SWTU, is a labor organization and has its offices at Route 1, Barber Avenue, Livingston, Wisconsin.

2. That Richland School District, hereinafter referred to as the District, operates a public school system and has its administrative offices at 125 South Central Avenue, Richland Center, Wisconsin.

3. That American Federation of State, County, and Municipal Employees, Council 40, hereinafter referred to as AFSCME, is a labor organization and has its offices at 5 Odana Court, Madison, Wisconsin.

4. That Francis Mueller, is an individual residing at Route 1, Richland Center, Wisconsin; and that at all times material herein Mueller has been employed as a Custodian by the District.

5. That in the instant proceeding SWTU seeks an election to determine the collective bargaining representative in a bargaining unit of employees consisting of all non-certified regular full-time and regular part-time employees of the District, including secretaries, food service teachers' aides, bookkeepers and crossing guards in the employ of the District, but excluding custodial/maintenance workers, the District Administrator, and other supervisory, managerial and confidential employees; that during the course of the hearing herein the District, and Mueller, who claims to speak for the custodial/maintenance workers, contends that the custodial/maintenance workers would constitute an appropriate unit and further that the unit proposed by SWTU is an appropriate unit for the purposes of collective bargaining; and that however AFSCME would have the Commission conduct the election in a broader unit, on which would not only include the employees desired by SWTU, but one which would also include the custodial/maintenance workers.

6. That at the outset of the hearing all parties stipulated that the following individuals, occupying the positions noted, were to be excluded from any unit found to be appropriate by the Commission, on the basis noted:

- B. Misurelli - Secretary to District Administrator - Confidential
- J. Alwin - Secretary to Business Manager - Confidential
- L. R. Blanchard - Supervisor of Transportation and Custodial Services
- K. Ewing - Food Service Supervisor

7. That the various non-instructional employees of the District are employed throughout eleven buildings maintained by the District; that, except for four or five otherwise eligible secretarial and clerical employees, who are employed on a twelve month basis, the remaining secretarial and clerical employees, aides, food service workers, and crossing guards are employed on a school term basis; and that all but two of the custodial/maintenance employees are employed on a twelve month basis, with the remaining two working only during the school term. The secretarial/clerical employees and aides, all perform dissimilar duties and the maintenance/custodial and food service employees each have separate supervision; that, while there has been no history of formal collective bargaining for any of the non-instructional employees of the District, for the past two years a Personnel Committee, consisting of representatives of the maintenance/custodial, food service, and secretarial/clerical employees met with representatives of the District for the purpose of an exchange of views with regard to wages, paid holidays, vacations, life insurance, health insurance, and

sick leave; that as a result thereof the District for the school year 1979-1980 established benefits for the non-instructional employees in the above matters with differences therein, depending on whether they were full-time (12 month basis, eight hours per day), term employees (employed from 170 to 220 work days in each school year for four or more hours each day), term/summer employees (who work for the school term in a particular position and who are additionally employed 10 weeks or more during the summer in another position), or part-time employees (work during the school term less than four hours per day, or who work eight hours a day for a given period).

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

CONCLUSIONS OF LAW

1. That questions of representation, within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act, have arisen among certain employees of the Richland School District.
2. That all regular full-time and regular part-time secretarial/clerical employees, food service employees, aides and crossing guards in the employ of Richland Center District, excluding custodial/maintenance employees, professional employees, managerial, supervisory and confidential employees, may constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d) 2.a. of the Municipal Employment Relations Act.
3. That all regular full-time and regular part-time custodial/maintenance employees in the employ of Richland School District, excluding all other employees, as well as excluding managerial, supervisory and confidential employees, may constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d) 2.a. of the Municipal Employment Relations Act..
4. That all regular full-time and regular part-time non-professional employees in the employ of the Richland School District, including custodial/maintenance employees, secretarial/clerical employees, food service employees, aides, and crossing guards, excluding professional employees, as well as excluding managerial, supervisory and confidential employees, may constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d) 2.a. 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 issues the following

DIRECTION OF ELECTIONS

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the following voting groups for the following stated purposes:

VOTING GROUP NO. 1

All regular full-time and regular part-time secretarial/clerical employees, food service employees, aides and crossing guards in the employ of Richland School District, excluding custodial/maintenance

employees, professional employees, managerial, supervisory and confidential employees, who were employed on July 16, 1980, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by Richland Center Council of Auxiliary Personnel/South West Teachers United, or by American Federation of State, County and Municipal Employees, Council 40, or by neither of said organizations, for the purposes of collective bargaining with Richland School District on questions of wages, hours and conditions of employment.


VOTING GROUP NO. 2

All regular full-time and regular part-time custodial/maintenance employees in the employ of Richland School District, excluding all other employees, as well as excluding managerial, supervisory and confidential employees, who were employed on July 16, 1980, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether (1) a majority of the employees in said voting group desire to be included in the bargaining unit described as Voting Group No. 1; and (2) whether a majority of such employees voting desire to be represented by Richland Center Council of Auxiliary Personnel/South West Teachers United, or by American Federation of State, County and Municipal Employees, Council 40, or by neither of said organizations, for the purposes of collective bargaining with Richland School District on questions of wages, hours and conditions of employment.


Given under our hands and seal at the
City of Madison, Wisconsin this 16th
day of July, 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

SWTU seeks an election in a unit consisting of all regular full-time and regular part-time non-professional employees of the District excluding the maintenance and custodial employees and those excluded by statute. The District and an employee contending to speak for maintenance/custodial employees concur in the propriety of the petitioned for bargaining unit, which would contain 58 employees. AFSCME contends that the only appropriate unit is a "wall to wall" unit of non-professional employees of the District, which unit would include the petitioned for unit, and additionally the maintenance and custodial employees.

In determining which unit is appropriate, the Commission must consider Section 111.70(4)(d)2.a. of MERA, which provides as follows:

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 in keeping with the size of the total municipal work force. In making such determination, the Commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

There are five groups of non-professional employees employed by the District. The various groups performing different duties and utilize different skills. These groups consist of a total of 80 employees, namely, 30 secretarial/clericals, 11 aides, 19 custodial/maintenance, 17 food service and 3 crossing guards. Custodial/maintenance, as well as food service employees have separate supervision, as do the secretarial/clericals and aides. There are some similarities in employment benefits. Such similarities are not based on employee groupings as such, but rather on whether a particular employee is a 12-month, school year, and full-time or part-time employee. Thus, the type of duties performed and the wages and benefits received by the employees in the various general job categories would appear to support separate units based on the differences in duties, supervision, wages and benefits. However, such a determination would result in undue fragmentation of bargaining units, especially in view of the overall size of the non-professional work force.

In light of the various positions of the parties regarding the appropriate unit or units to be established herein, and in light of the fact that, in the past, the Commission has established units consisting of custodial personnel only 1/, we have concluded that an overall non-professional unit would be appropriate with or without the inclusion of the custodial employees, and therefore we directed the various elections herein to effectuate that result. Should the custodial employees vote not to be so included, two units of non-

1/ Lodi Schools (16667) 11/78.

professional employees will have been established. Therefore, in this proceeding the custodial employees (Voting Group No. 2) will be given two ballots (1) to determine whether they desire to be included in a single unit with the remaining non-professional employees (Voting Group No. 2), and (2) what representation they desire, if any, for the purposes of collective bargaining. The custodial employees who appear to vote will be instructed to place their representation ballots in a furnished blank white envelope and to seal such envelope and deposit same in the ballot box. The unit determination ballot will be a separate colored ballot and the custodial employees will be instructed to deposit their unit determination ballots in the ballot box.

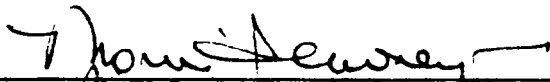
The unit determination ballots cast by the custodial employees will be initially counted, and should a majority of the eligible custodial employees vote in favor of being included in a unit with remaining non-professional employees, the sealed envelopes, containing the ballots of the custodians with respect to representation will be opened and their ballots will be co-mingled with the representation ballots cast by the remaining non-professional employees, and thereafter the tally will include the representation ballots cast by all employees.


Should a majority of the custodial employees eligible not vote in favor of being combined in a unit with the remaining non-professional employees, then the custodial employees shall constitute a separate unit, and their representation ballots will not be co-mingled with the representation ballots cast by the remaining non-professional employees. Should that end result the representation ballots cast by the custodial employees will be tallied to determine their choice as to their bargaining representative .

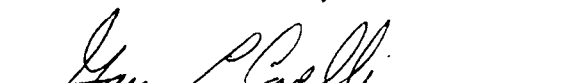
Dated at Madison, Wisconsin 16th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner