

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SCHOOL DISTRICT OF CORNELL

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: Case III  
: No. 26084 ME-1833  
: Decision No. 17982

Ms. Mary Virginia Quarles, Executive Director, Central Wisconsin  
UniServ Council-West, P.O. Box 1666, Wausau, Wisconsin 54401,  
appearing on behalf of the Association.  
Mulcahy & Wherry, S.C., Attorneys at Law, 409 South Barstow  
Street, Eau Claire, Wisconsin 54701, by Mr. Michael J. Burke,  
appearing on behalf of the District.

Cornell Auxiliary Personnel Association having filed a petition on April 25, 1980, requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the Municipal Employment Relations Act, among certain employees of the School District of Cornell, and a hearing having been conducted on June 6, 1980, at Chippewa Falls, Wisconsin, before Duane McCrary, Examiner, and the Commission having considered the evidence and arguments of counsel, makes and issues the following

1. That the Cornell Auxiliary Personnel Association, hereinafter referred to as the Association, is a labor organization and has its offices at Central Wisconsin UniServ Council-West, P.O. Box 1606, Wausau, Wisconsin, 54401.

2. That the School District of Cornell, hereinafter referred to as the District, operates a public school system and has its main offices at 205 South Seventh Street, Cornell, Wisconsin, 54732, and that at all times material herein, Bernard Bennett has been employed by the District as Superintendent.

3. That in the instant proceeding the Association seeks an election among certain employees of the District to determine whether said employees desire to be represented by the Association for the purposes of collective bargaining; that during the course of the hearing herein the parties stipulated that the unit appropriate for the purposes of collective bargaining consists of all regular full-time and regular part-time custodial-maintenance employees, excluding aides other than custodial aides, cooks, secretaries and other auxiliary employees; that the District employs the following number of

employees in the positions noted, which are considered custodial-maintenance positions:

- 1 - Custodial Supervisor
- 3 - Full-time Custodians
- Part-time
- 2 - Custodial Aides
- 2 - Custodian/Maintenance (CETA)
- 1 - Custodian/Maintenance (West Central Community Action Program)

4. That also during the course of the hearing the parties agreed that employees employed as of May 30, 1980 would be eligible to participate in the election; and that, however, issues arose as to the alleged supervisory status of the Custodial Supervisor, and as to whether the individuals employed pursuant to the CETA and the WESTCAP programs are eligible to vote in the election.

5. That the District maintains two buildings, one housing grades K through 6, and the other grades 7 through 12; that the Custodial Supervisor, Lavern Billiard, is housed at the latter building; that each building also has one full-time Custodian; that the remaining full-time custodian "floats from one building to the other; that the remaining custodial personnel perform duties at both buildings; that Billiard visits the K through 6 building about once a month to observe the manner in which the building is being maintained; that Billiard spends a majority of his time performing custodial duties, in that during the school years he spends 80 percent of his time performing cleaning and maintenance tasks, while during the summer months he spends 50 percent of his time in such tasks; that the remainder of his time is spent in assigning and overseeing the work of others; that while Billiard and Bennett jointly recommend the hiring of the two CETA and one WESTCAP employee, who were the only applicants for such positions, Billiard, as Custodian Supervisor, did not participate in the decision to hire Urban Gass, a full-time custodian; that Billiard has not disciplined, discharged, promoted or effected the permanent transfer of an employee, nor effectively recommended same; that Billiard directs the activities of the custodians, groundskeeper, youth workers and painters during the summer months; that during the school year the majority of work is performed by Billiard and the custodial staff without specific direction and according to a routine schedule; that although Billiard is the highest paid custodial employee at \$1016 per month, he is the most senior employee; that the Junior-Senior High School and Elementary principals have the authority to direct the custodial staff in their respective buildings to perform specific tasks; that Billiard has made no change in the custodial staff work hours since becoming Custodial Supervisor; that Billiard checks with Bennett before granting employee time off and confirms all vacation requests with him as well; that Billiard has settled no employee complaints nor does he evaluate the performance of the custodial staff; and that Billiard oversees the cleaning and maintenance of two buildings.

6. That, in addition to Billiard, the District employs three full-time custodians, Sweeney, Gass and Roth, two part-time custodial aides (McMenamin and Simenson), two CETA custodial maintenance employees (Reuss and Heineman), and one WESTCAP custodial maintenance employee (Helland); that the government funding for Helland, Reuss and Heineman will expire in August, 1980, December 4, 1980 and July, 1981, respectively; that the CETA and WESTCAP personnel perform duties similar to duties performed by the other custodial-maintenance employees and enjoy similar conditions of employment with some

exception; that while the CETA employes are terminable at a specified time, pursuant to the CETA grant, their employment will not terminate in the near future; that the two CETA employes have expectancy of continued employment, as well as a common community of interest with other employes involved herein and are appropriately included in the bargaining unit; that while Helland enjoys a community of interest with the other positions included herein, the occupant of this position will have his employment terminated in August, 1980, pursuant to the WESTCAP contract and thus has no expectancy of continued employment.

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 custodial-maintenance employes of the School District of Cornell including custodial aides, but excluding confidential, supervisory, managerial employes and all other employes, constitutes an appropriate bargaining unit within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act. 1/
2. That Lavern Billiard, occupying the position of Custodial Supervisor is a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.
3. That the CETA and WESTCAP funded custodial positions are occupied by employes within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and that therefore the occupants of such positions are included in the collective bargaining unit involved herein, but that, however, Helland, since he will be terminated in August, 1980, is deemed a temporary employe, and therefore is not eligible to participate in the election directed herein.

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

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission among all regular full-time and regular part-time custodial-maintenance employes of the School District of Cornell including custodial aides, but excluding confidential, supervisory, managerial employes and all other employes, who were employed on May 30, 1980, except those employes who may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether said employes desire to be represented by the Cornell Auxiliary Personnel Association

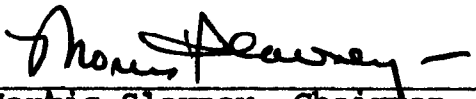
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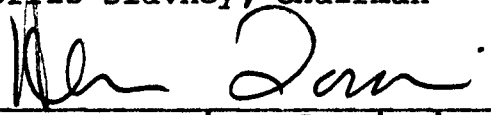
1/ Although the parties stipulated as to the appropriate unit, we have modified that description to more accurately reflect the statutory purposes of the Municipal Employment Relations Act.

for the purposes of collective bargaining with the School District of Cornell with respect to wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 6th day of August, 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

At the hearing herein the parties stipulated to the unit appropriate for collective bargaining, however issues arose as to whether certain custodial positions should be included in said unit. The District would have the Commission exclude the Custodial Supervisor from the unit, on the claim that the occupant thereof is a supervisor, and also the CETA and WESTCAP funded custodial positions since they are occupied by individuals with no expectation of continued employment. The Association would include all of said positions in the unit.

Section 111.70(1)(o)1 of the Municipal Employment Relations Act, defines the term "supervisor" as follows:

As to other than municipal and county fire fighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

In order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory, the Commission will consider the following factors:

1. The authority to recommend effectively the hiring, promotion, transfer, discipline or discharge of employees;
2. the authority to direct and assign the work force;
3. the number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. the level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees;
5. whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. the amount of independent judgment and discretion exercised in the supervision of employees. 2/

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2/ City of Milwaukee (6960) 12/69; City of Merrill (19707) 6/76.

The Commission concludes that while the Custodial Supervisor exercises some independent judgment and discretion in the direction of employees in the summer months, it decreases significantly during the school year as the work performed is more or less routine. Further, Billiard appears to supervise an activity, i.e., the cleaning and maintenance of two buildings, rather than supervising employees, and he spends a majority of his time performing custodial duties rather than supervising employees. We conclude that the custodial supervisor is a lead worker, and we are not persuaded that Billiard's pay level is determinative to establish supervisory status. Accordingly, we conclude that the statutory criteria are not present in sufficient combination and degree to warrant the conclusion that the position of Custodial Supervisor is a supervisory position under the Municipal Employment Relations Act.

The District employs two CETA funded personnel, Reuss and Heineman, who were hired for eighteen months at an approved hourly rate funded through CETA. Reuss is to be terminated on December 4, 1980, and Heineman in July, 1981. Helland was hired in May, 1980, for a four-month term of employment funded through the West Central Community Action Program (WESTCAP), they all work a 40 hour week.

The record demonstrates that the occupants of the CETA and WESTCAP positions perform work which is similar to that done by regular custodians and enjoy similar conditions of employment with some exception. The District does not intend to rehire any of the three funded personnel after their period of employment expires.

We have consistently ruled that the source of funding for a given position is not a sufficient ground for the exclusion of that position from a bargaining unit. 3/ The Commission has ruled that the CETA amendments which placed limitations on the wages and benefits that may be paid employees filling CETA funded positions and limiting the maximum term of employment for said employees to eighteen months represented parameters for collective bargaining concerning the wages, hours and conditions of employment applicable to employees working in CETA funded positions. 4/ These limitations do not prevent the parties from bargaining the wages and fringe benefits of CETA employees. The Commission has noted that the limitations with respect to job tenure could support a finding that such employees are temporary where the limitation has nearly been reached and there is no indication that the employee will be transferred to a regular position. This finding would be relevant to a determination with respect to the eligibility of the incumbent to vote in an election proceeding but not controlling for purposes of determining whether such positions are appropriately included in a collective bargaining unit.

The two CETA personnel occupy positions similar to the District's regular custodial staff. They perform similar duties and enjoy conditions of employment similar to other custodial employees of the District. Further, CETA contracts, although of limited dura-

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3/ Trempealeau County (Social Services Department) (16402) 6/78.

4/ Winnebago County (Department of Social Services) (10304-A) 9/79.

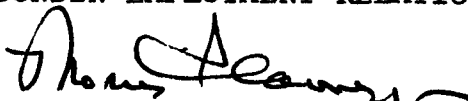
tion, are reasonable and are in fact often renewed. Thus, CETA employees share a community of interest with other custodial/maintenance employees of the District and because the two CETA employees' term of employment will not expire for at least five and eleven months, they will be permitted to vote in the election directed herein.

The WESTCAP employe performs similar duties and enjoys similar conditions of employment as other District employees, and thus the position enjoys a community of interest with other bargaining unit positions. However, because the incumbent's term of employment will expire in August, 1980, pursuant to the WESTCAP contract, we conclude that he is a temporary employe and therefore ineligible to vote in the instant election.

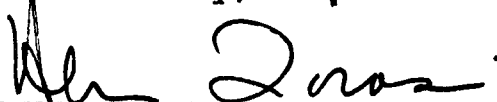
Dated at Madison, Wisconsin this 6th day of August, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Gary I. Covelli, Commissioner