

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES #40,
AFSCME, AFL-CIO

Case XIII
No. 26619 ME-1882
Decision No. 18200

Involving Certain Employees of

SCHOOL DISTRICT OF SOLON SPRINGS

Appearances:

Mr. James Ellingson, District Representative, Route 1, Box 2,
Brule, Wisconsin 54888, appearing on behalf of the Union.
Mr. James J. Courtney, Attorney at Law, Box 233, Solon Springs,
Wisconsin 54873, appearing on behalf of the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO having on August 4, 1980 filed a petition 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 Solon Springs, and a hearing having been conducted on September 11, 1980 at Solon Springs, Wisconsin, before Duane McCrary, Examiner, and the Commission having considered the evidence and arguments of counsel, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at Route 1, Box 112-B, Superior, Wisconsin 54880.

2. That the School District of Solon Springs, hereinafter referred to as the District, operates a public school system and has its main offices at Solon Springs, Wisconsin 54873.

3. That in the instant proceeding the Union seeks an election among certain employees of the District to determine whether said employees desire to be represented by the Union 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, non-instructional employees of the District, including food service employees, bus drivers, maintenance employees, clerical employees and all other non-instructional employees excluding supervisory, confidential and managerial employees; that the parties further stipulated that the position of Executive Secretary occupied by Mrs. Janet Rowe, is confidential in nature; and that however, during the course of the hearing, an issue arose as to whether the individuals employed pursuant to the CETA and Title I programs are eligible to vote in the election.

4. That the District employs three CETA custodial employees, Nancy Faul, Karen Haskins and Gina Young who began their employment with the District on September 4, 1979, September 29, 1979 and January 13, 1980

respectively; that the basic term of employment under CETA is one year, but this may be and has been extended for six months for Young; that the District plans to hire Faul as a regular custodial employee when her CETA employment terminates; that the CETA employees perform duties similar to those performed by the regular custodial employees; that the CETA employees enjoy similar conditions of employment, however, the CETA employees are entitled to one week's vacation after six month's employment; that Andrew Booker, formerly a CETA employee, was hired as a regular custodial employee when the government funding for his position expired; that while the CETA employees are terminable at a specified time, pursuant to the CETA grant, their employment will not terminate in the near future; that the CETA employees have an expectancy of continued employment, as well as a common community of interest with the other employees in the stipulated unit involved herein.

5. That the District employs three Title I Aides, Mary Fried, Caroline Long and Mary Kay Stordahl, who perform remedial work in reading and math with designated elementary students under the guidance of a certified teacher for a school year, or until the teacher determines that the student no longer needs the service; that the Title I Aides are hired for a school year, pursuant to the Elementary, Secondary Education Act (ESEA) and are paid by the federal government; that the District expects their employment contracts to be renewed for the following school year; that Fried and Long receive \$4,879 in annual salary, while Stordahl receives \$4,600, and the elementary school Aide is paid \$4,789; that the District also employs a high school library aide at the annual rate of \$4,270 who, in addition to performing usual library duties, supervises students using the library at the high school; that while the Title I Aides perform dissimilar duties, they work the same hours as the elementary school Aide and enjoy similar conditions of employment; that while the Title I Aides are terminable at the end of the school year, pursuant to the ESEA grant, their employment will not terminate in the near future; that the Title I Aides have an expectancy of continued employment, as well as a common community of interest with other employees in the stipulated unit.

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, non-instructional employees of the Solon Springs School District including food service employees, bus drivers, maintenance employees, clerical employees and Aides, but, excluding managerial, supervisory, confidential and all other employees, constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act.

2. That the CETA funded custodial positions are occupied by municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act and that the occupants of these positions are included in the collective bargaining unit found to be appropriate herein and are eligible to vote in the instant election.

3. That the Title I Aide positions are occupied by municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and that therefore the occupants of these positions are included in the collective bargaining unit found to be appropriate herein and are eligible to vote in the instant election.

Upon the basis of the above and foregoing Findings of Fact and

Conclusions of Law, the Commission makes and issues the following

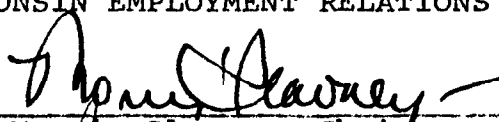
DIRECTION OF ELECTION

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, non-instructional employees of the Solon Springs School District, including food service employees, bus drivers, maintenance employees, clerical employees and Aides, excluding managerial, supervisory, confidential and all other employees, who were employed on, October 30, 1980, except those employees who 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 Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO for the purposes of collective bargaining with the School District of Solon Springs with respect to wages, hours and conditions of employment.

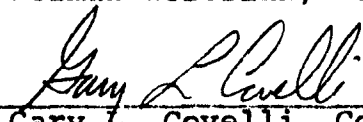
Given under our hands and seal at the
City of Madison, Wisconsin this 30th
day of October, 1980.

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 the parties stipulated to the description of the appropriate unit for collective bargaining. 1/ However issues arose as to whether the CETA funded custodial positions and the Title I Aide positions performing clerical duties should be included in said unit. The District would exclude the positions from the stipulated unit, contending they have no community of interest with regular employees, and further, that they are occupied by persons with no expectation of continued employment. The Union argues that the CETA and Title I positions perform duties similar to regular employees of the District, enjoy similar hours and conditions of employment, have an expectation of continued employment and on that basis, the positions should be included in the unit.

CETA Custodials

The Commission has consistently ruled that the source of funding is not a sufficient ground for the exclusion of a position from a collective bargaining unit. 2/ Further, 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. 3/ 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 where 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 District employs three CETA funded personnel. The basic term of CETA employment is one year, but it can be extended for six months. Ms. Young's contract has been extended six months beyond September 4, 1980 and Ms. Faul will be hired as a regular employee when funding for her position has expired.

The CETA custodial workers perform work which is similar to that done by regular custodians and both groups are supervised by Mr. Shores, the custodial supervisor. Both groups enjoy similar conditions of employment, however, CETA employees are entitled to one week's vacation after being employed for six months.

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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.
 - 2/ Trempeleau County (Social Services Department) (16402) 6/78.
 - 3/ Winnebago County (Department of Social Services) (10304-A) 9/79;
School District of Cornell (17982) 8/80.

Because CETA employes share a community of interest with other custodial employes of the District and because their term of employment will not expire in the near future, they are "municipal employes" under the Municipal Employment Relations Act, are appropriately included in the bargaining unit and are eligible to vote in the election directed herein.

Title I Aides

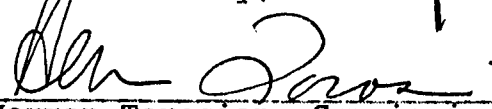
Although the Title I Aides perform duties which are distinguishable from those performed by the elementary school Aide and the high school library Aide, they are compensated at nearly the same level and enjoy similar conditions of employment. Thus, these positions enjoy a community of interest with the elementary school Aide and the high school Aide. Further, the Title I Aides are employed on a school year basis as are the other Aides, and their contracts are renewable and have in fact, been renewed. Consequently, the Title I Aides are appropriately included in the bargaining unit and are eligible to vote in the election.

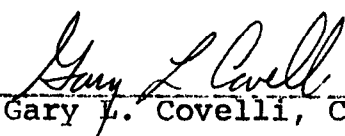
Given under our hands and seal at the
City of Madison, Wisconsin this 30th
day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner