

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RANDALL CONSOLIDATED SCHOOL
DISTRICT NO. 1

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: Case VII
: No. 26432 ME-1858
: Decision No. 18291
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Ms. Esther L. Thronson, UniServ Director, Southern Lakes United Educators, Council 26 NEA-WEAC, 202 East Chestnut Street, Burlington, Wisconsin 53105, for the Petitioner.
Godfrey, Pfeil & Neshek, S.C. by Mr. Ronald A. Brand, 11 North Wisconsin Street, Elkhorn, Wisconsin 53121, for the Municipal Employer.

Southern Lakes United Educators, Council 26 NEA-WEAC, filed a petition on June 23, 1980, with the Wisconsin Employment Relations Commission requesting the Commission to conduct a representation election pursuant to the provisions of the Municipal Employment Relations Act among certain employees of the Randall Consolidated School District No. 1. Hearing was held on the matter on September 5, 1980 at Bassett, Wisconsin before Stuart S. Mukamal, Examiner. The parties exchanged post-hearing briefs, the last of which was received on November 6, 1980. The Commission, having considered the record, and arguments of the parties, hereby makes and issues the following

3. That the Association, in its petition initiating the instant proceeding and throughout the course thereof, has contended that the appropriate bargaining unit in which it desires the Commission to conduct a representation election, should consist of only the non-supervisory custodial employes of the District, while the District has consistently maintained that such a bargaining unit would not be an appropriate bargaining unit within the meaning of the Municipal Employment Relations Act.

have considerable contact and interchange during the working day and all, with the exception of the bus drivers, are full-time, day-shift employees; that the custodial employees share common supervision with the food service workers and the bus drivers, and to some degree share common supervision with the clerical employees; and that the District, with few exceptions, deals with all of its non-professional employees on a uniform basis concerning all matters normally included within the scope of collective bargaining although it has met separately with each sub-group of such employees to discuss other matters of peculiar concern to them.

5. That the District's 3 custodial employees do not share a "community of interest" sufficiently unique and distinct from the interests of the District's remaining non-professional employees so as to warrant the establishment of a separate collective bargaining unit, since such a unit would unduly fragment collective bargaining relationships within the District.

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

CONCLUSION OF LAW

1. That the custodial employees in the employ of the Randall Consolidated School District No. 1 do not 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 Conclusion of Law, the Commission makes and issues the following

ORDER

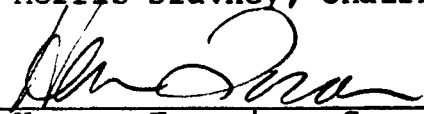
That the petition filed in this matter be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin this 9th
day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER DISMISSING
PETITION FOR ELECTION

The Association seeks an election in a unit composed of three custodial employees. The District contends that the unit sought by the Association is not an appropriate bargaining unit in that such a unit would unduly fragment collective bargaining within the District. In particular, the District notes that it employs four other sub-groups of non-professional employees: bus drivers, food service workers (cooks), clerical employees and instructional aides, which, together with the District's custodial employees, total 17 persons. The District further denies that the custodial employees share a "community of interest" distinct from some or all of these other categories of employees.

The Association had earlier filed a petition with the Commission seeking an election among an overall group of the District's non-professional employees (as described hereinabove) to determine whether such employees wished to be represented by it for purposes of collective bargaining. 1/ Prior to hearing on that matter, on June 22, 1979, the parties stipulated to an election in such a bargaining unit, which election was conducted on July 30, 1979. The results of that election indicated that a majority of the employees in that unit did not wish to be so represented. 2/ The Association subsequently, by letter dated July 31, 1979, requested that the District voluntarily recognize a somewhat smaller bargaining unit comprised of the District's instructional aides, clerical, custodial and food service employees. Such request was not granted. The District argues that the Association should be estopped from pursuing the petition filed herein on the grounds that it had previously stipulated to the appropriateness of a larger bargaining unit. We do not agree with the District's contention in this regard. By stipulating to an election in an overall unit of non-certified employees, the Association agreed only that such was an appropriate bargaining unit. It did not thereby indicate that the overall unit was the only appropriate bargaining unit for the employees included therein, nor did it thereby waive its right to subsequently timely petition for an election among one or more of the employee sub-groups contained within that unit. The Association's petition in this proceeding, filed approximately one year following the conduct of the earlier election, must be evaluated independently on its own merit.

In determining whether a unit comprised of the District's custodial employees is an appropriate bargaining unit, the Commission must consider Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, which provides as follows:

The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable and keeping with the size of the

total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, division, institutions, crafts, professions or other occupational groupings constitute a unit.

In applying the above statutory criteria in establishing appropriate bargaining units, the Commission has considered the following factors: 3/

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the Unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

The record reveals that, although the custodial employees of the District perform duties that are somewhat distinct from those performed by the District's other non-professionals, all employees share a considerable "community of interest", and a unit comprised solely of each group of non-professional employees would unduly fragment collective bargaining relationships within the District. All of the District's non-professional employees share a common workplace. All have considerable contact and interchange with each other during the working day and to some degree, their duties are interdependent. The custodial employees are supervised by Mr. Philip Koepnick, the District's Business Administrator, who also supervises the bus drivers and food service workers and in concert with Ms. Yvonne Lemmerhirt, the District's Education Administrator, also supervises the clerical employees. All of the District's non-professional employees with the exception of the bus drivers, are full-time first shift employees (although the food service workers and instructional aides are employed during the school year, while the custodial and clerical employees are employed year-round). Three sub-groups of the District's non-professionals (the clerical, custodial and food service) share essentially the same level of fringe benefits. Finally, although the District has in the past, separately met with each of the sub-groups of non-professional employees to discuss wages, hours and working conditions, such discussions were conducted consecutively on the same day, and the reason for separate discussion was to consider issues of

3/ See City of Franklin (18208) 11/80; Wisconsin Heights School District (17182) 8/79; Lodi Jt. School District No. 1 (16667) 11/78; Kenosha Unified School District No. 1 (13431) 3/75.

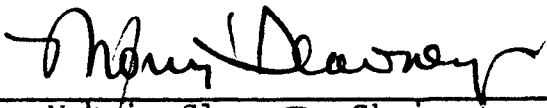
individual concern which were especially unrelated to subjects generally addressed in collective bargaining. Furthermore, with few exceptions, 4/ the District has in the past treated the five sub-groups as a single unit for most purposes on subjects that fall within the ambit of collective bargaining.

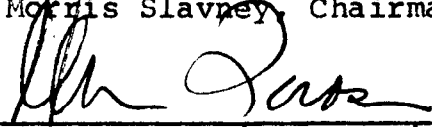
The Association's petition seeks to establish a bargaining unit comprised of custodial employees, based on its contention that such employees possess a "community of interest" distinct from the District's remaining non-professionals. Such a position, if carried to its logical conclusion, would lead to the establishment of five separate bargaining units for a total of 17 employees. While such a situation might be deemed appropriate in a much larger school district, it clearly would constitute an undue fragmentation of bargaining relationships in a district of this size, contrary to the policy set forth in Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act 5/ in the absence of exceptional circumstances. The Association has failed to demonstrate that the District's custodial employees share a sufficient quantum of unique interests from the interests of the District's other non-professional employees so as to dictate a contrary result and warrant their organization as a separate bargaining unit. 6/


For the foregoing reasons, the Commission concludes that the bargaining unit sought by the Association is not an appropriate unit pursuant to the applicable provisions of the Municipal Employment Relations Act, and therefore, the Association's petition for election filed in this matter is hereby dismissed.

Dated at Madison, Wisconsin this 9th day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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4/ For example, the food service workers were granted a somewhat greater increase for the 1980-1981 school year than were the other non-certified employees, in order to make their wages more comparable to their counterparts in neighboring districts.

5/ See e.g. Columbus School District (17259) 9/79, Sun Prairie Jt. School Dist. No. 2 (14392-A), 11/76, Merton Jt. School Dist. No. 8 (12085) 8/73.

6/ Cf. the much different factual background present in Lodi Jt. School District No. 1, supra n. 4, where the opposite conclusion was reached.