

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
RACINE EDUCATION ASSOCIATION
Involving Certain Employees of
RACINE UNIFIED SCHOOL DISTRICT

Case LXXXIII
No. 32844 ME-2319
Decision No. 21690

Appearances:

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, Suite 600, Insurance Building, 119 Monona Avenue, P. O. Box 1664, Madison, WI 53701, by
Mr. Jack D. Walker, for the School District.
Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P.O. Box 8003, Madison, WI 53708, for the Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Racine Education Association having, on January 25, 1984, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among substitute teachers employed by the Racine Unified School District to determine whether said employees desire to be represented for the purpose of collective bargaining by said Association; and hearing having been conducted in Racine, Wisconsin, on March 27, 1984, by Mary Jo Schiavoni, an Examiner on the staff of the Commission; and a transcript having been prepared; and the parties having completed their briefing schedule by April 13, 1984; and the Commission having considered the evidence and the arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Racine Education Association, hereinafter the Association, is a labor organization having its principal offices located at 701 Grand Avenue, Racine, Wisconsin.

2. That the Racine Unified School District, hereinafter the District, is a municipal employer engaged in the operation of a public school system having its principal offices located at 2220 Northwestern Avenue, Racine, Wisconsin.

3. That the Association is currently the certified exclusive collective bargaining representative of a unit consisting of all regular full-time and regular part-time certified teaching personnel employed by the District, but excluding on-call substitute teachers, interns, supervisors, administrators, and directors as described in Case I, Decision No. 7053.

4. That the Association, in its brief, states that the appropriate bargaining unit should be defined as follows:

all regularly employed substitute teachers who appear on the substitute list as approved by the Racine Board of Education on March 1, 1984, and all subsequent lists of substitute employees approved by the Racine Board of Education excluding all other employees and supervisors;

that, however, the Association contends that substitute teachers who have worked less than thirty (30) days during the 1983-84 school year are casual employees who should be ineligible to vote in an election and excluded from the bargaining unit.

5. That the District argues that the persons described in the petitioned-for unit are not employees within the meaning of Sec. 111.70(1)(b), Stats., and that the petition is inappropriate; that, in the alternative, the District contends that the unit should consist of all substitute classroom or homebound teachers who have taught during the current school year and who are still on the substitute list as of the date of election; and that the District also takes the position that long-term substitute teachers (i.e. those substitutes guaranteed a minimum of thirty (30) consecutive days of employment), and teachers on leave of absence from the unit certified in Decision No. 7053 whose names appear on the substitute list should be excluded from the unit.

6. That the District utilizes a substitute teacher list established at the beginning of the school year upon which the school board members vote their approval; that said list is revised monthly by additional lists containing additions to and deletions from the initial substitute teacher list; and that the school board members also approve all subsequent lists.

7. That substitute teachers are employed to fill day-to-day or long-term vacancies among the regular teaching staff or to instruct sick homebound students on an "as needed" basis which may range from half a day to almost an entire school year; that some individuals listed on the substitute list may actually never work during a given school year; that a District employee normally coordinates assignments by contacting substitute teachers on the approved list as anticipated vacancies are made known to her, but that principals from the individual schools may, on their own accord, contact individuals whose names appear on the list.

8. That the District currently pays substitute teachers as follows: substitute teachers are paid \$45.00 per day worked; that, in the event a substitute teacher works twenty (20) days in a continuous assignment, on the twentieth day the rate is raised from \$45.00 to \$75.00, and the \$75.00 is paid retroactively to the eleventh day of the assignment; that, in the event a substitute teacher works in excess of sixty (60) days in a school year, on the sixty-first day the rate will be changed to \$53.00 per day; and that a substitute teacher may accept a long-term substitute assignment which is known to be at least thirty (30) continuous days for a long-term daily rate of \$75.00 per day.

9. That, at the hearing, the Association introduced a list which the District provided in response to a request for public records; that said list, hereinafter referred to as the Association's List, included the names of substitute teachers on the official District List approved by the school board and the number of days and half days worked by each substitute teacher; that the District maintains that the Association's List is inaccurate and incomplete because it was prepared by the District employee who coordinates central assignment of substitutes but who has no knowledge of substitute teachers who receive assignments from various building principals; that the District, at hearing, submitted its own list, hereinafter referred to as the District's List, which contains the names of substitute teachers on the official District List approved by the school board and the gross amount of money each substitute earned this fiscal year to date; that the District does not possess any records reflecting full or half days worked by substitute teachers other than weekly building sheets submitted by the forty-five (45) building principals directly to the District's payroll department; and that the District has not provided more accurate information as to the accurate number of days and half days worked by substitute teachers than that reflected on the Association's List.

10. That the Association's List reveals the following information:

Total Employees on the List	196
Employees on List who have not worked this year	76
Employees on List who have worked less than 10 days this year	16
Employees on List who have worked less than 30 days this year	53
Employees on List who have worked 30 or more days this year	56

11. That the District's List, along with the monthly substitute lists, reveals the following information:

Total Employees on the List	239
Employees on List who have not worked this year	33
Employees on List who (probably) worked less than 10 days (based on earnings of \$45 per day)	51
Employees on List who have (probably) worked at least 20 days (based upon earnings of \$700 or more)	124
Employees on List who have (probably) worked at least 30 days (based on earnings of \$1350 or more)	93

12. That long-term substitutes perform the same work as day-to-day substitutes under common supervision, are not currently included in any other bargaining unit, and share a community of interest with the other day-to-day substitutes and homebound teachers and, therefore, are appropriately included in the bargaining unit.

13. That the teachers on the substitute list who are currently on leaves of absence from the unit of regular full-time and regular part-time teachers certified in Decision No. 7053 share a sufficient community of interest with other substitute teachers and are, therefore, appropriately included in the bargaining unit.

14. That substitute teachers who have taught less than ten (10) days in the present school year have insufficient interest in wages, hours and conditions of employment to be found eligible to vote in the election directed below but are included in the bargaining unit.

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

CONCLUSIONS OF LAW

1. That substitute teachers are municipal employees within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

2. That the appropriate bargaining unit consists of all substitute and homebound teachers including long-term substitutes employed by the Racine Unified School District on the District's substitute list, excluding supervisory, confidential and managerial employees and all other employees.

3. That to ensure that the vote is representative of the choice of the largest possible number of substitutes without including individuals with insufficient interest in wages, hours and conditions of employment, only those substitute teachers who have taught at least ten (10) days during the 1983-84 school year are eligible to vote in the election directed below.

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

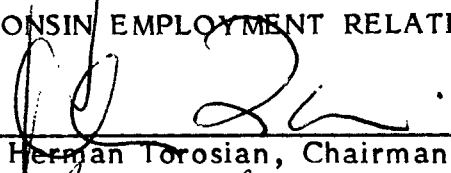
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five days from the date of this Direction in the collective bargaining unit set forth in Conclusion of Law 2 among all employees included therein who were employed on May 16, 1984, and who have worked at least ten (10) days during the 1983-84 school year, 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 said employees desire to be represented by the Racine Education Association for purposes of collective bargaining with the Racine Unified 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 May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

The Racine Education Association filed a petition with the Commission requesting that an election, pursuant to Sec. 111.70, Wis. Stats., be conducted among "substitute teachers in the District." At hearing and in its brief the Association amended its petition to request an election in a unit defined as follows:

all regularly employed substitute teachers who appear on the substitute list as approved by the Racine Board of Education on March 1, 1984, and all subsequent lists of substitute employees approved by the Racine Board of Education excluding all other employees and supervisors. 1/

During the course of the hearing conducted regarding the aforementioned petition on March 27, 1984, issues arose with respect to the appropriateness of the petitioned-for unit, the unit status of long-term substitutes and teachers on leave of absence from the regular teachers' unit who appear on the substitute list, and the appropriate voting eligibility standard.

The record reflects that at the onset of each school year, the District compiles a list of names of individuals approved by the Board of Education to serve as substitute and/or homebound teachers. This list is amended monthly with additions and deletions approved by the Board of Education. Substitutes are employed to fill day-to-day or long-term vacancies among the regular teaching staff. They are also hired to teach homebound students who are ill, injured, or unable to attend school for some reason. The list of substitute teachers reflects whether they will accept assignments in elementary or high school or both, the subjects they are willing to teach, and any limitations or preferences they may have in terms of subject or school or grade level which might impact upon their assignment. Substitutes are offered work on an "as needed" basis, ranging from one day or a half day in a single teaching assignment to almost an entire school year. Some individuals listed on the substitute list may actually never work during a given school year.

Positions of the Parties:

The District argues that the persons described in the Association's petitioned-for unit are not employees within the meaning of Sec. 111.70(1)(b), Stats., and that, therefore, the petition is inappropriate. It urges dismissal of the petition. In the alternative, it is the District's position that the unit should consist of all substitute classroom or homebound teachers who have taught during the current school year and are still on the substitute list as of the date of the election with two notable exceptions. It contends that long-term substitute teachers should be excluded from the unit because they lack a sufficient community of interest with other substitute teachers. The District also maintains that teachers on leave of absence from the regular teacher unit certified in Decision No. 7053 whose names also appear on the substitute list should also be excluded from the substitute teacher unit because of conflicting interests and because they are at best temporary employees as applied to the substitute unit.

1/ Both the Association and the District agree that homebound teachers are appropriately included in the unit as substitute teachers.

The Association argues that substitute teachers are employees within the meaning of Sec. 111.70 but that individuals who have worked less than thirty (30) days during the current school year should be excluded as casual employees and therefore be ineligible to vote. The Association urges the Commission to be cautious in establishing the eligibility date as of the date of the Direction of Election if it requires less than thirty (30) working days for eligibility pointing to a possibility of the District seeking out persons who the District believes will cast negative votes and hiring them between the date of hearing and the date of the Direction of Election. The Association argues that long-term substitute teachers should be included as they share common working conditions, common duties, and common supervision with day-to-day substitute teachers. It also avers that the regular teachers on leave of absence should be included in the substitute unit irrespective of the fact that sometime in the future they may return to teach full-time as regular classroom teachers.

Discussion:

The Commission in previous cases 2/ has been confronted with the argument that day-to-day substitute teachers were not employees and were not entitled to collective bargaining rights under MERA. It has consistently rejected this argument and has concluded that substitute teachers are employees within the meaning of MERA. 3/ We reaffirm this decision in all respects.

Having concluded that substitute teachers are employees who are thus eligible for representation for purposes of collective bargaining, we now address the scope of the bargaining unit petitioned for as well as the eligibility of individuals to vote. There is no contention that any of the substitutes should be included in the regular teacher unit. The Commission finds that the appropriate collective bargaining unit consists of all substitute and homebound teachers including long-term substitutes employed by the District regardless of the number of days taught. However, only those substitute teachers who have actually worked a minimal number of days will be allowed to vote. 4/ We reach this conclusion because those individuals who have not worked at least at a minimal level do not possess an interest in wages, hours and conditions of employment which is sufficiently strong and similar to that possessed by more often employed substitutes so as to warrant their participation. However, the largest possible number of substitute teachers should be deemed eligible to vote consistent with the above-noted requirement.

In previous cases we have used both a thirty (30) day 5/ and a ten (10) day 6/ cutoff point. Under the facts of this case, ten days appears to us to be appropriate for ensuring that the vote is representative of the wishes of the largest possible number of substitutes without including individuals with insufficient interest in wages, hours and conditions of employment.

Turning to the long-term substitutes, it is evident that they share a substantial community of interest with the other day-to-day substitutes. Long-term substitutes are taken from the same list as the day-to-day substitutes. They are currently not included in any other bargaining unit. At the expiration of their limited contracts, they ordinarily return to teaching as a day-to-day substitute. They share common supervision and a common interest in wages, hours and conditions of employment with other substitute employees and thus are properly included in the petitioned-for unit.

2/ Milwaukee Board of School Directors, 8901 (2/69); Kenosha Unified School District, 14908 (9/76).

3/ Milwaukee Board of School Directors, supra; Kenosha Unified School District, supra.

4/ Kenosha Unified School District, supra.

5/ Milwaukee Board of School Directors, supra; Madison Jt. School District No. 8, 13734-B and 13781-A (9/75).

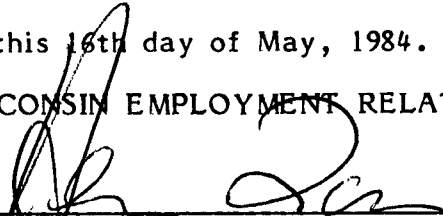
6/ Kenosha Unified School District, supra.


Similarly, regular teachers on leave-of-absence status who appear on the substitute list share a sufficient community of interest with the other substitutes to warrant unit inclusion. It is true that their substitute status may turn out to be short. However, while they are substitutes they share the same concerns and warrant the same representation, if any, as other substitutes have. They are, accordingly, properly included in the substitute unit.

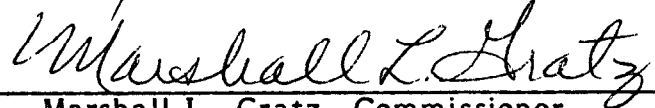
Dated at Madison, Wisconsin this 16th day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner