

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

PITTSVILLE EDUCATIONAL  
SUPPORT PERSONNEL  
ASSOCIATION :

Involving Certain Employees of :

SCHOOL DISTRICT OF PITTSVILLE  
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Case XVII  
No. 32988 ME-2334  
Decision No. 21806

Appearances:

Wisconsin Education Association Council, 101 West Beltline Highway,  
P. O. Box 8003, Madison, Wisconsin 53708, by Mr. Stephen Pieroni,  
Staff Counsel; and Pittsville Support Personnel Association by Mr.  
David Hanneman, Executive Director, Central Wisconsin UniServ Council-  
South, 2805 Emery Drive, P. O. Box 1606, Wausau, Wisconsin 54401,  
appearing on behalf of the Petitioner.

Mulcahy & Wherry, S.C., Attorneys at Law, P. O. Box 1004, Wausau, Wisconsin  
54401-1004, by Mr. Dean R. Dietrich, appearing on behalf of the  
District.

Wisconsin Council 40, AFSCME, AFL-CIO, 909 - 5th Avenue, Stevens Point,  
Wisconsin 54481 by Ms. Cindy S. Fenton, Staff Representative,  
appearing on behalf of the Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Pittsville Educational Support Personnel Association, hereinafter referred to as the Association, having on February 13, 1984 filed a petition requesting that the Wisconsin Employment Relations Commission conduct an election among all non-teacher personnel including custodial, cooks, aides and secretaries employed by the School District of Pittsville, hereinafter referred to as the District; and hearing on said petition having been conducted on April 17, 1984 in Pittsville, Wisconsin, by Daniel J. Nielsen, an Examiner on the Commission's staff; and Local 2486-A, Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, having been permitted to intervene at said hearing on the basis of its status as the current exclusive bargaining representative for the employees in the unit requested; and the District and the Association having submitted post-hearing briefs which were exchanged through the Examiner on May 11, 1984; and the Commission, having considered the evidence and the arguments of the parties, makes and issues the following

FINDINGS OF FACT

1. That the School District of Pittsville (District) is a municipal employer with offices at Pittsville, Wisconsin; that the District provides educational services to the citizens living within the School District of Pittsville; and that in the delivery of said services the District employs non-teaching personnel including employees classified as custodial, maintenance, clerical, and aides.

2. That the Pittsville Educational Support Personnel Association (Association) is a labor organization affiliated with the Wisconsin Education Association having offices c/o Wisconsin Education Association Council, 101 W. Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708.

3. That Wisconsin Council 40, AFSCME, AFL-CIO (AFSCME) is a labor organization having offices at 909 - 5th Avenue, Stevens Point, Wisconsin 54481; and that AFSCME, through its affiliated Local 2486-A, is the certified exclusive representative for a unit composed of all regular full-time and regular part-time employees employed as custodial, maintenance, clerical, teacher aides, food service, library aide, and health aide but excluding professional, managerial, supervisory and confidential employees of the District, pursuant to an election certified by the Commission on May 18, 1978 (Decision No. 16292).

4. That on February 13, 1984, the Association filed a timely petition requesting an election in the above-noted bargaining unit currently represented by AFSCME; that the Association and AFSCME, contrary to the District, contend that five District employees (the floater custodian, three kindergarten aides, and the high school special education aide) currently treated by the District and AFSCME as outside that bargaining unit should be included and eligible to vote in the election; and that the Association, contrary to AFSCME and the District, requested that the Commission direct the election in this matter immediately following the conclusion of the hearing with the five disputed positions out of twenty-five combined proposed eligibles being permitted to vote by challenged ballot with said challenges being decided by the Commission, if necessary, after the election.

5. That Ervin Winters retired in 1972 as a full-time custodian with the District; that Winters has been employed since January 1, 1973 as a "floater" custodian; that Winters performs custodial and maintenance work on the District offices every week of the school year; that the time required for this custodial and maintenance work varies from week to week, but averages four to five hours per week year round; that Winters is essentially unsupervised in the performance of these duties, although the Superintendent, Enoch Brice, provides him with instructions when necessary; that Winters also substitutes for other custodians employed by the District when those custodians are absent due to vacation or illness; that Winters works for up to one week at a time in substitute custodial positions; that Winters' substitute duties are performed at irregular intervals during the school year according to need; that Winters receives the same rate of pay as other building and maintenance custodians having over two years experience in the District; that Winters does not receive the same fringe benefits as those received by custodians in the current bargaining unit; that Winters has a reasonable expectation of continued employment with the District; that Winters performs essentially the same duties as other custodians employed by the District; and that Winters is a regular part-time employee of the School District of Pittsville.

6. That the District has, through the 1983-1984 school year, participated in the Cooperative Educational Services Agency #7 (CESA 7); that, due to a legislatively mandated redistricting, CESA 7 will cease to exist on June 30, 1984; that a geographic area including the District's will become part of the new CESA 5; that a Board of Directors for the new CESA 5 has been constituted and has met for the purpose of administratively structuring the new CESA District; that no permanent Director for CESA 5 has been selected; that requests for funds from school districts are generally handled through the CESA Director; that it is as yet undetermined whether there will be any carryover funds in the new CESA 5 from the predecessor CESAs; and that the District has not yet made a determination whether it will participate in the new CESA 5.

7. That the District employs instructional aides; that in the second semester of the 1983-1984 school year, the District employed three instructional aides in its kindergarten class; that these aides were employed because of an unexpectedly large enrollment in the kindergarten in the 1983-84 school year; that the District does not anticipate a need for such aides in the kindergarten in the 1984-85 school year; that each of the three kindergarten aides, Betty Turnquist, Debra Shoemaker and Wendy Grutzik, signed an employment contract with the District providing that:

"The parties understand and agree that this is a solemn, binding contract for the second semester of the 1983-84 school year and for the second semester only since CESA #7 is being dissolved June 30, 1984 and the future of Chapter 1 is still undetermined."

that the kindergarten aides are paid by the District through monies obtained from reallocated funds of the CESA participating Districts; that the kindergarten aides perform essentially the same duties as other aides employed by the District; that the District has determined that kindergarten aides will not be necessary in the first grade classes in the 1984-85 school year; and that although the kindergarten aide positions are regular part-time in nature, the incumbents do not have a reasonable expectation of continued employment with the District.

8. That the District secured the services of Pamela Kumm as a high school special education aide for the second semester of the 1983-84 school year; that Kumm's services were obtained for the District through CESA 7; that the District employed Kumm in response to a request for assistance by the high school special

education teacher; that the teacher requested assistance because of the addition of three special education students who came to the District through foster homes within the District in the 1983-84 school year; that prior to placement in the District, these students had been in correctional institutions; that the home districts of these students are obliged to pay the District a total of \$2,100 per year for providing schooling to these students; that the District is obliged to offer educational services to these students until they attain the age of 21; that one of these students will not return to the District school in the 1984-85 school year; that the District has not yet determined whether the other two students will return in the 1984-85 school year; that Pamela Kumm therefore does not lack a reasonable expectation of continued employment with the School District of Pittsville; and that Pamela Kumm is a regular part-time employe of the School District of Pittsville.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. That the collective bargaining unit described in Finding of Fact 3 is an appropriate unit within the meaning of Sec. 111.70(4)(d)2, a, MERA.
2. That a question of representation exists among the employes within the collective bargaining unit described in Finding of Fact 3.
3. That the floater custodian position is included in the collective bargaining unit set forth in Finding of Fact 3; and that the occupant of the position is a regular part-time employe and therefore is eligible to vote in the election ordered herein.
4. That the three kindergarten teacher aide positions are properly included in the unit described in Finding of Fact 3; but that although the occupants of these positions are regular part-time employes, they do not have a reasonable expectation of continued employment with the District and are therefore not eligible to vote in the election ordered herein.
5. That the high school special education aide position is included in the collective bargaining unit described in Finding of Fact 3; that the occupant of this position is a regular part-time employe of the District; and that the occupant of this position has a reasonable expectation of continued employment with the District and is therefore eligible to vote in the election ordered 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 be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive and a collective bargaining unit consisting of all regular full-time and regular part-time employes of the School District of Pittsville employed as custodial, maintenance, clerical, teacher aides, food service, library aide, health aide, but excluding professional, managerial, executive, supervisory and confidential employes who were employed by the School District of Pittsville on June 22, 1984, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes desired to be represented by Pittsville Board of Education Employees Local 2486-A, AFSCME, AFL-CIO, or by Pittsville Educational Support Association, WEAC, or by neither of said organizations, for the purpose of collective bargaining with the School District of Pittsville on wages, hours and conditions of employment.

Given under our hands and seal at the City of  
Madison, Wisconsin this 22nd day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Herman Torosian, Chairman

Marshall L. Gratz, Commissioner

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

The nature of this proceeding is summarized in the preface and Finding of Fact 4. We have not granted the Association's request for a pre-decision direction of election because the positions at issue represent too large a proportion of the eligibles to make it likely that their votes will not affect the outcome of the vote. 1/

The parties stipulated to the appropriate description of the collective bargaining unit, and further agreed that the work performed by the incumbents of the disputed positions was similar in nature to that performed by aides and custodians in the bargaining unit. The District argued, however, that the "floater custodian" was a casual employee and thus not a regular employee within the meaning of the unit description. The District further contends that the incumbents of the kindergarten and high school special education aide positions are temporary employees, and are thus ineligible to vote and/or excluded from the unit. AFSCME and the Association both assert that these positions are properly included in the unit as regular employees and that the incumbents are eligible to vote in any election ordered by the Commission.

I. Floater-Custodian

There is no support in the record for the District's contention that Ervin Winters, the part-time custodian who cleans the District's office and substitutes for absent custodians, is a casual employee. The Commission has long held that regular part-time status turns on the regularity of employment rather than working some minimum number of hours per week. (Village of Monticello, 18463-A, (5/81). Winters cleans the administrative offices of the District and has done so virtually every week during the school year for twelve years. His precise hours of work have varied according to the demands of the offices' condition. On the basis of this regular weekly office cleaning work alone we find Winters to be a regular part-time employee and eligible to vote in the election, without even considering the additional work he performs as a substitute.

II. High School Aide

The District asserts that the funding for the position - a combination of tuition reimbursement and CESA funds - is, at best, in doubt for the next year because of the restructuring of the CESAs. Furthermore, the aide was hired solely because of the addition of three students who presented discipline problems. One of the three will definitely not be in the District next year and the other two may graduate. Thus, the District argues, both the funding and the need for the position are in sufficient question to merit the finding this employee temporary.

Mere uncertainty as to whether funding will continue is insufficient to support a conclusion that the incumbents lack a reasonable expectation of continued employment. 2/ This is not a case where funding for the positions in question will definitely terminate on a given date. For, CESA funds may or may not be available to the high school aide in the 1984-85 school year. As with the kindergarten aides, the status of this position must be determined by reference to whether there will continue to be a need for the service provided. Inasmuch as two of the three special students may return to the high school in 1984, we conclude that the high school aide has a reasonable expectation of continued employment with the District and is therefore eligible to vote in the election ordered herein.

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1/ Compare our rationale for issuing a pre-decision direction of election in Fond du Lac Schools, Dec. No. 17638-A (WERC, 6/84).

2/ Manitowoc County, Dec. No. 15250-B (WERC, 9/77).

### III. Kindergarten Aides

The District asserts that the three kindergarten aides are temporary employees, ineligible to vote in the election. The District notes that the aides were hired solely for the purpose of coping with an unusually high enrollment in the kindergarten in the 1983-84 school year, that they signed employment contracts specifically limiting their employment to the second semester, that the funds for these positions are not available to the District for the coming year and that the District's determination is that these aides' positions are not necessary for the 1984-85 school year.

The Association contends that the District's primary reason for limiting the employment of these aides is the uncertainty of CESA funding. The Association stresses that the reorganization of the CESA Districts may have cast doubt about the availability of funds, but has not removed the source of funding. The District may still apply for Chapter 1 funds to the new CESA, or may use the basic CESA grant or general revenues to employ these aides. All doubts should be resolved in favor of eligibility. The Association contends, and the kindergarten aides should be allowed to vote in the representation election.

The kindergarten aides are currently performing work on a regular part-time basis that is identical in character and work schedule to that performed by other aides undisputedly included in the bargaining unit.

However, the evidence establishes that the current occupants of the kindergarten aide positions lack a reasonable expectation of continued employment. The Superintendent testified that these positions are being eliminated as of the end of the 1983-84 school year and that the employees have been so advised by the District. These particular aides were hired specifically in response to a higher than expected enrollment in the grade of kindergarten, but that condition is not expected to continue into the 1984-85 school year.

The Commission has consistently held that individuals performing duties on a regular full-time or regular part-time basis that are similar to those of the other employees in a bargaining unit but who lack a reasonable expectation of continued employment are ineligible to vote in elections being conducted in a unit of regular full-time and regular part-time employees. 3/


We would emphasize, however, that our determination above concerning eligibility is based neither on the source of the District's funding of these positions nor on the District's extant uncertainty as to its ability to secure Chapter 1 funding of these positions after the 83-84 school year. For, the record in this case does not reveal that the District was any more than unsure of its ability to secure funds. Moreover, we have made it clear by our wording of Conclusion of Law 4 that we are not excluding the kindergarten aide positions in question from the bargaining unit. As we have formally concluded, the incumbent kindergarten aides are municipal employees protected by MERA who are performing duties similar to those of other bargaining unit employees on a regular part-time basis. As such, their positions are properly included in the bargaining unit despite the incumbents' ineligibility to vote in the election.

Dated at Madison, Wisconsin this 22nd day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

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3/ Ibid.