

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

**COLDWATER COMMUNITY SCHOOLS,**  
Public Employer-Petitioner

**Case No. UC97 G-33**

-and-

**COLDWATER EDUCATIONAL SUPPORT  
PERSONNEL ASSOCIATION,**  
Labor Organization

---

APPEARANCES:

Thrun, Maatsch & Nordberg, by Martha Marcero, Atty, for the Employer-Petitioner

White, Przybylowicz, Schneider & Baird, by Douglas V. Wilcox, Atty, for the Labor Organization

**DECISION AND ORDER**

This case was heard at Coldwater, Michigan on December 11, 1997, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Pursuant to Section 13 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.213, MSA 17.455(13), and based on the record, including a brief filed by the Labor Organization on March 9, 1998, the Commission finds as follows:

**The Petition and Positions of the Parties:**

This petition was filed on July 1, 1997 by the Coldwater Community Schools. The Coldwater Educational Personnel Association currently represents a bargaining unit consisting of all bus drivers, substitute bus drivers, bus maintenance employees, paraprofessionals, secretaries, and clerk-typists employed by the Petitioner. By this petition, the Employer seeks to remove substitute bus drivers from this unit.

The Employer's position is that its substitute bus drivers are casual employees as this Commission currently defines the term. The Union asserts that we have not adopted a *per se* rule finding all substitutes to be casual employees excluded from bargaining units. It argues that we have, instead, looked at a number of factors, including duties and responsibilities, hours of employment, regularity of employment, the right to refuse to take an assignment, expectations of continued employment, degree of contact with other employees, and overlap of supervision. The Union

maintains that the substitute bus drivers in this case are not casual employees. It also asserts that the substitute bus drivers continue to share a community of interest with the rest of the bargaining unit.

**Facts:**

The Union currently represents a bargaining unit of approximately 114 employees, in the classifications set out above. The most recent collective bargaining agreement between the parties expired on July 31, 1997. At the time of the hearing in December 1997, there were 24 regularly scheduled bus drivers in the unit and five or six substitute bus drivers.

The transportation supervisor supervises both the regularly scheduled and the substitute drivers. The 24 regularly scheduled bus drivers are divided under the contract into two groups: “regularly employed bus drivers,” who work a minimum of 20 hours per week on scheduled five day weeks, and “assigned run drivers,” who are assigned runs less than 20 hours per week but on a five day schedule. The former are commonly referred to as full-time drivers, the latter as part-time. The substitute bus drivers fill in for both full-time and part-time drivers.

The requirements for becoming a regular or substitute driver are the same. All drivers are required to be certified by the State of Michigan. By statute, all school bus drivers must be older than 17 and possess a chauffeur’s license with a passenger endorsement. On beginning work, all bus drivers must have either a certificate indicating that he or she has successfully completed a course in school bus safety education within the past two years, or confirmation that he or she is enrolled in an entry level bus safety education class. All drivers are required to complete a one day continuing education course every two years. The Employer pays both regular and substitute drivers for time spent taking this course. All drivers must get a blood pathogen test every year.

When driving a route, a substitute bus driver has the same responsibilities and authority as a regularly scheduled driver. Before leaving with a bus to drive a route, both substitute and regularly scheduled drivers must check the oil and fluid levels of the bus, fuel the bus, make sure the bus is maintained inside, and clean the windows inside the bus. The basic responsibility of a driver is to make sure that the children get to and from school safely. Under the student disciplinary code, students are first warned orally about misbehavior on a bus. In cases of continuing misbehavior, or for worse offenses, students receive pink slips with different degrees of punishment. Both substitutes and regularly scheduled drivers have the authority to issue pink slips. Both substitute and regularly scheduled drivers may contact parents if there is a problem with a student’s behavior on the bus.

Regularly scheduled drivers keep their assigned runs from year to year. When a run becomes vacant, it is posted for bid by regularly scheduled drivers based on their seniority in classification. Although the bus routes generally do not change much from year to year, regularly scheduled drivers are responsible for “fine tuning” their bus runs at the beginning of the year, and for contacting as many parents as possible to inform them what time their children will be picked up and dropped off. Substitutes do not do this unless they have been assigned a temporary route. Whenever a substitute driver is assigned a temporary route, he or she is paid and receives benefits as a regularly scheduled

driver for the duration of that temporary assignment.

Unless assigned to a temporary route, substitute drivers work on call. Substitute drivers may indicate what hours they are interested in driving. One testified that since she has another noontime job, she doesn't take any noon runs. Substitutes may also refuse runs without a penalty. If a substitute is unavailable too often, however, the Employer will stop calling him. One substitute was told that if she continued to drive for a Head Start program, she would be dropped from the substitute list.

"Extra trips" include summer runs, substitute runs for which the Employer has had sufficient notice, field trips, and other outings. By contract, extra trips are posted on a list at the bus garage. A committee of bus drivers administers the "trip board." When an extra trip becomes available, the committee posts it on the board. If a regularly scheduled driver is interested, he signs his name. The committee then determines who is to get the trip based on seniority of the regular drivers who have signed. The contract states that substitutes who are not laid-off drivers may drive extra trips only if there are no regularly employed drivers, assigned run drivers, or laid off drivers available to take the route. If no regular driver signs up for an extra trip, the committee goes to the transportation supervisor, who finds a substitute to drive it. During the 1996-97 school year, substitutes drove about 2% of the extra trips.

For most of the runs driven by the substitute drivers, the Employer does not find out that it needs a substitute until that morning or the night before. When the supervisor is notified that a regular driver will not be able to work, either she or her secretary call substitute drivers until they find one who is home and who is able to work. A grandfather clause in the contract requires the Employer to call all substitutes hired before 1995 in order of seniority. There is only one current substitute who comes under this clause. As a matter of practice, however, the supervisor and her secretary generally call the most senior drivers first, unless they know that another substitute is more familiar with the route.

The Employer was previously required by contract to offer regular driver vacancies to the most senior substitutes. In the last several years, the Employer has hired a number of substitutes as regular drivers. According to the Employer, it did not like this provision because there were substitutes lower down on the seniority list that it would have preferred to hire first. The Employer is not now required to hire or to give preference to any substitute hired after 1995. Only one substitute currently is entitled to hiring preference.

At the end of the 1996-97 school year, substitute drivers were asked to sign statements of their intent to return to work the following school year. Substitutes are given no contract or particular guarantee of continued employment. However, the record indicates that in general substitutes are given the opportunity to continue to work the next school year if they wish.

During the course of the 1996-97 school year the Employer employed a total of 11 substitute drivers. Of these 11, four appear also on the Employer's list of regularly scheduled drivers as the

lowest seniority regular drivers.<sup>1</sup> These four apparently continued to work as on-call substitutes during 1996-97 while also driving regular routes. A fifth substitute was hired as a regularly scheduled driver in August 1997. Of the remaining six employees employed as substitute drivers in 1996-97, three were still working as substitute drivers at the time of the hearing in December 1997. Of these three one was hired in April 1995, one in September 1996, and one in November 1996. The two other employees working as substitute drivers on the date of the hearing were hired after the beginning of the 1997-98 school year. On the average, the substitute drivers who worked for the Employer during the 1996-97 school year worked for the Employer as substitutes for slightly less than two years.

Regular drivers are regularly scheduled to work between 1.5 and 8 hours per day, depending on the length and number of routes they drive. As indicated above, regular drivers may drive extra trips in addition to their regular routes. Regular drivers averaged approximately 1500 hours per driver during the 1996-97 school year. One regular driver drove 442 hours and one drove 855. All of the other regular drivers drove more than 1,000 hours. As a group, the 11 substitutes working during the 1996-97 school year averaged approximately 373 hours per driver, although one substitute worked 870 and another worked 856 hours. During the first three months of the 1997-98 school year, the Employer employed only five substitutes. During this period one substitute averaged between 32 and 40 hours per week. Although the record indicated that this was more than any other substitute, the record did not indicate how much the other substitutes worked during this period.

Both substitutes and regularly scheduled drivers are paid hourly. The regularly scheduled drivers are paid \$12.37 per hour and the substitute drivers \$10.00 per hour. Regularly scheduled drivers receive prorated health insurance benefits if they work 20 hours per week or more. They also receive life insurance, and a week's vacation pay at Christmas after they have worked 10 years. Substitutes do not receive these benefits.

### **Discussion and Conclusions of Law:**

Individuals who work as substitutes are employees under the Act. However, whether they are entitled to bargaining rights depends on whether they are deemed casual or irregular employees, a determination which is made on a case-by-case basis. *Southfield Public Schools*, 1984 MERC Lab Op 162, *aff'd* 148 Mich App 714 (1985).

In *Mt. Morris Consolidated Schools*, 1993 MERC Lab Op 24, and *Lansing Public Schools*, 1993 MERC Lab Op 18, we reviewed our past decisions regarding the status of substitute teachers, particularly those who work "on call." We concluded, after review, that more important than the number of hours or frequency of work was "the nature of the employment relationship with respect to the continuity and expectancy of permanent and/or regularly scheduled ongoing employment." We found that the pertinent factors had been set forth previously in *Waterford School District*, 1977 MERC Lab Op 697, 702:

---

<sup>1</sup> The record indicates that at the time of the hearing one of these was on a long-term leave.

The record is clear that the duration of employment for most substitute teachers at any time is irregular, and ordinarily there is no commitment for such individuals to teach from one day to the next. Most substitute teachers are free to decline employment on any day or for any particular opening offered. Moreover, substitute teachers are often available to serve different school districts in the same week, month or semester. Accordingly, we conclude that insofar as any one employer is concerned, while the substitutes are public employees within the meaning of the Act, their employment relationship is casual and temporary in nature.

Considering these factors, we concluded that the “daily per diem substitute” teachers in both *Mt. Morris* and *Lansing* were casual employees.

In *Sault Ste. Marie Area Public Schools*, 1993 MERC Lab Op 893, we granted a petition to remove on-call substitute teachers from an existing bargaining unit without holding a hearing. We said:

We have declined to hold a hearing where a party seeks to litigate an issue where the law is clearly settled (citations omitted). We find this to be such a case. In *Lansing, supra* and *Waterford, supra*, we concluded that the employment relationship of daily per diem substitutes was casual and temporary in nature based on several factors: their assignments were of irregular duration; they made no commitment to teach from one day to the next; they were free to decline employment and/or work for several school districts. In its response to the Order to Show Cause, the MEA has failed to demonstrate that these criteria do not apply to the substitutes in the Sault Ste. Marie Schools. Under these circumstances, we find that no issue has been raised which would require a hearing. We therefore find it appropriate to clarify the bargaining unit to exclude daily per diem substitute teachers.

These same factors were used in determining that substitute bus drivers and substitute bus monitors were casual employees who should be excluded from a unit of regularly scheduled employees in *Chelsea School District*, 1994 MERC Lab Op 268. We held:

The substitute drivers and monitors here are not regular employees . . . These employees are on-call, are not guaranteed an assignment, may reject an assignment, and may accept work in another district. They are used only when a regular driver or monitor is absent.

In *Chelsea*, we noted that substitute drivers collectively drove only 6 percent of the runs during the previous school year, and that no substitute drove more than 138 runs during that year. We held that the small number of runs driven by substitute drivers substantiated the conclusion that the substitute drivers were casual employees. However, in our determination the number of runs driven by substitutes was secondary to the factors listed above.

The substitute drivers in this case work on call. Their assignments are short and of irregular duration; if the Employer has the need for a long term substitute, it creates a temporary assignment and the substitute filling it is treated as a regular driver for the duration of that assignment. The substitute drivers do not commit to work from one day to the next. They may be dropped from the substitute list if they fail, over time, to make themselves sufficiently available to fill the Employer's needs. However, they may decline to work on a particular day or for a particular opening. Substitutes are not prohibited by the Employer from working elsewhere. We conclude that these factors alone support a finding that the substitute drivers here are casual employees. However, we also note that figures provided for the 1996-97 school year established that most of the substitutes worked substantially fewer hours than the regularly scheduled drivers. We also note that from 1996-97 to 1997-98 as many substitute drivers (3) left the Employer's employment as continued working as substitutes.<sup>2</sup> Moreover, according to the seniority list, the substitutes working during 1996-97 had worked for the Employer for an average of only two years.

We wish to comment about the holding in *City of Southfield, supra*. In that case, the Court of Appeals affirmed our finding that a group of substitute custodians were not casual employees. These substitute custodians worked on-call. However, the record established that over a year's period, half of the substitutes averaged approximately as many hours as regularly scheduled, full-time, 40-hour per week employees. The three substitutes who worked the least number of hours averaged 28.4 hours per week. The remaining substitutes averaged more than 30 hours per week. Most substitutes routinely worked five-day weeks. Although the substitutes nominally had the right to refuse assignments without penalty, the record indicated that if a substitute refused an assignment without reason he or she was considered "not a good employee," and that therefore substitutes rarely turned down assignments. We concluded that even though they worked only when called, these substitutes' employment was not irregular or intermittent because they were called virtually every day, and because they had essentially committed themselves to working every day. We continue to recognize that there may be circumstances when a substitute employee may be a regular employee even though he or she works on call rather than on a regular schedule. However, these circumstances do not exist here. We agree with the Employer that the substitute drivers in this case are casual employees. As the parties do not currently have a contract which covers the substitutes, the Employer's request to remove them from the bargaining unit is appropriate and should be granted. See *Jackson Public Schools*, 1993 MERC Lab Op 825

### **ORDER**

The bargaining unit consisting of bus drivers, substitute bus drivers, bus maintenance employees, paraprofessionals, secretaries and clerk-typists employed by the Coldwater Public Schools

---

<sup>2</sup> We recognize that the number of employees returning as substitute drivers for the 1997-98 school year might have been higher had the Employer not hired several substitutes to fill regular vacancies. This is something the Employer is no longer required to do under the contract. The Employer, however, may continue filling regular vacancies from the group of substitutes, even if it does not give the jobs to the most senior substitutes.

is hereby clarified to remove the classification of substitute bus driver.

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

---

Maris Stella Swift, Commission Chair

---

Harry W. Bishop, Commission Member

---

C. Barry Ott, Commission Member

Dated: \_\_\_\_\_