

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Case 10
No. 39444 ME-218
Decision No. 10095-B

Appearances:

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by Mr. Thomas R. Crone, 119 Martin Luther King, Jr. Blvd., P. O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of the Racine Unified School District.

Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Racine Education Assistants Association.

FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER

Racine Unified School District having, on September 28, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to the provisions of the Municipal Employment Relations Act, for the purposes of determining whether all regular full-time and regular part-time aides, excluding supervisors and confidential employees are represented by the Racine Education Assistants Association for the purposes of collective bargaining, after a vote was taken at an Association meeting on September 21, 1987 to affiliate with the Wisconsin Education Association Council and to establish a UniServ relationship with the Racine Education Association; and hearing having been conducted in the matter in Racine, Wisconsin, on February 5, 22 and March 10, 1988 before Examiner Lionel L. Crowley, a member of the Commission's staff; and a stenographic transcript having been made of the hearing; and the parties having filed briefs in the matter which were exchanged on September 27, 1988; and the parties having informed the Commission on October 17, 1988 that they agreed not to file a reply brief; and the Commission having reviewed the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Racine Unified School District, hereinafter referred to as the District, is a municipal employer and maintains its principal offices at 2220 Northwestern Avenue, Racine, Wisconsin 53404; and that Frank Johnson is the District's Director of Employee Relations and has acted as its agent.

2. That the Racine Education Assistants Association, 1/ hereinafter referred to as the REAA, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and is the certified exclusive bargaining representative of a bargaining unit consisting of all teacher and clerical aides excluding supervisors and employees of other bargaining units; 2/ that its principal offices are c/o Sally Keppler, 5735 Cambridge Court, Racine, Wisconsin 53406; and that Sally Keppler is the REAA's President and has acted on its behalf.

1/ Prior to May 18, 1987, the Racine Education Assistants Association was named the Racine Educational Aides Association. On February 16, 1987, a motion was made at a regular quarterly meeting to change the name of the organization and the membership voted at the regular May 18, 1987 meeting to change the name to its present form. It is undisputed that the name change involved no substantive change in the organization and is not an issue in this matter.

2/ Racine Unified School District, Dec. No. 10095 (WERC, 2/71).

3. That the District and REAA have been parties to a series of collective bargaining agreements, the most recent covering the 1985-86 and 1986-87 school years; that there are approximately 300 employees in the bargaining unit represented by REAA; and that from its inception, the REAA has been represented by hired negotiators including first, James Clay, then Executive Director of the Racine Education Association, hereinafter REA, and most recently by Attorney Robert Weber.

4. That at the REAA's quarterly membership meeting on February 16, 1987, it was decided that the REAA would send some representatives to a state-wide conference of aides organizations in Oshkosh on April 3, 1987, to compare notes and to discover what other aides organizations were going to seek in negotiations; that at the May 18, 1987, membership meeting, the representatives who attended the conference discussed and reported that the REAA was the only Association without any affiliation with another association or union; that there was a discussion of possible affiliation with the REA; and that a committee was formed to investigate and study affiliation options and alternatives.

5. That on July 23, 1987, this committee met with representatives of REA and discussed affiliation with REA and/or an UniServ relationship with REA; that the committee insisted the REAA remain self governing; that on July 24, 1987, another meeting was held with the REAA Executive Board and affiliation with WEAC and/or REA was discussed; that on August 11, 1987, an Executive Board meeting was held where affiliation was again discussed in the context of the REAA becoming a branch of the REA, governed by the Wisconsin Education Association Council, hereinafter referred to as WEAC; that on September 2, 1987, the Executive Board held a meeting where it voted to recommend to the membership that REAA affiliate with WEAC and establish a UniServ relationship with REA; and that it also decided that a letter be sent to all employees represented by the REAA advising them what such action would mean.

6. That sometime after the September 2, 1987 meeting, invitations for the September 21, 1987 fall meeting and banquet were sent to all employees in the unit; that the invitation asked for an RSVP by September 14, and stated as follows:

"Special Guest Speaker Jim Ennis will discuss Possible Affiliation with REA";

that President Sally Keppler prepared a letter to be sent to all employees but the list of the work locations of employees was not available until September 11, 1987; and that the following letter, dated September 14, 1987, was distributed after that date to all unit employees:

Dear Fellow Assistant

Welcome to the 1987-88 school year. The Fall banquet meeting will be held at Giovanni's on Monday, September 21, 1987. At this meeting your Executive Board has some exciting news to share with you that will affect all of us.

As you may recall, a committee was appointed last Spring and charged with the responsibility to investigate and recommend a better method of managing our assistants association. We believe the committee has accomplished that goal.

The committee met with our attorney, Robert Weber, and later with representatives of the Racine Education Association. Members of your Executive Board also attended meetings with assistants and UniServ staff from other large school districts in Wisconsin. From these meetings we found that there were many advantages to affiliation with the largest organization representing public school employees in the State of Wisconsin. We also found that we were the only large assistants organization not affiliated.

We discovered that Racine assistants are behind in salaries, fringe benefits and contract language from that of many other assistant organizations because of this lack of affiliation.

Therefore, after investigation and consideration we suggest that our organization become affiliated with the Wisconsin Education Association Council and establish a UniServ relationship with the Racine Education Association.

Before you are asked to consider supporting our recommendation we will have presentations from representatives of the Wisconsin Education Association Council. Those presentations will discuss the advantages and rights we will have in our affiliation. We will then have a question and answer session before you are asked to vote on your Board's recommendation. To be eligible to vote you must become a member that evening.

In conclusion let me state that your Executive Board believes that this meeting is very important to each and every member. We are convinced that without this affiliation our relationship with the school district will continue to be strained and unfair. We know that we will benefit from the strength that is offered by affiliation and the opportunity to become an active part of the 43,000 member Wisconsin Education Association Council.

Attached to this letter is a listing of some of the benefits that we will gain from affiliation.

Sincerely,

Sally Keppler, President
Racine Educational Assistants Association;

and that the attachment was as follows:

WEAC UniServ affiliations means:

- Active representation before the Board of Education
- Grievance and negotiations assistance
- Lobbying representation on local, state and national level
- Legal services
- Local and state training programs
- Department of Public Instruction representation
- Urban educational aides affiliation
- REA and WEAC research services
- Services from the most active UniServ unit in the State of Wisconsin
- Representation in proportion and similar to teachers
- Continuity through the maintenance of records, schedules and all relevant data
- Meeting place
- Professional office services including:
 - Secretarial services
 - Printing
 - Computer access

Professional staff assistance for all problems including, medical, dental, payroll, assignment, transfer, seniority, layoff, harassment, legal

- Development of positive teacher/aide relationship
- Million dollar Liability Insurance

7. That on September 21, 1987, the REAA held its fall membership meeting and banquet; that at this meeting unit employees could become a member of the REAA; that all but one person chose to become a member; that guests were invited including one retiree; that after the banquet the business portion of the meeting started with Attorney Weber indicating that the membership, after hearing the presentations that evening, might wish to get further information and vote at a special meeting at a later date but stating that it was up to the members to make that decision; that Sally Keppler, REAA President, explained why the September 14, 1987 letter was not sent out earlier; and that thereafter several speakers addressed the members including David Younk, REA President; James Blank, WEAC President, Carol Williams, Aide/Association-Madison President; James Ennis, REA Executive Director.

8. That after these presentations, Ennis took questions from the members on the membership costs after affiliation, on fair share, dental insurance, assistance in negotiations and arbitration, retirement, salary schedule changes for college credit, and lobbying efforts; and that after this question period, Attorney Weber again indicated that the members were not compelled to vote that night and could decide to get more information and vote at a later date; that Sally Keppler thereafter took charge of the meeting and a number of members raised their hands to be recognized, including Marilyn Christensen, Helen Alusic and Marlene Hemple; that Keppler recognized Hemple who made a motion that REAA affiliate with WEAC and have a service agreement with REA and this motion was seconded; that Connie Runge then moved to amend that motion to allow a vote on whether to vote that night or at some later date; that the vote on the amendment to vote that night or later was taken by a show of hands and the members thereby decided to vote on Hemple's affiliation motion that night; that paper ballots were then distributed and tellers appointed; and that after the ballots were marked by individuals at the tables, the tellers collected them and counted them with the motion to affiliate with WEAC and enter into a service agreement with REA carrying by a vote of 117 for and 24 against with one ballot void.

9. That on September 22, 1987, Kathleen Doll, a member of the REAA, who was not present at the September 21 membership meeting because she was attending a class that evening, contacted Frank Johnson, District Director of Employee Relations, about the affiliation vote and stated her opinion that the vote wasn't conducted fairly because there had not been sufficient notice of the vote and members did not have sufficient time to consider the affiliation issue; and that Johnson on September 24 or 25, 1987, met with Doll and another employee, Sue Griffiths, who also had not attended the September 21, 1987 meeting; and that Doll and Griffiths told Johnson, based on conversations with other members, that the voting process was "real loose."

10. That on September 28, 1987, the District filed the Instant Petition for Election asserting that the affiliation represented a substantial and material change in the identity of the collective bargaining representative and that the affiliation vote did not comport with the requirements of due process.

11. That the District has failed to demonstrate that it had a reasonable basis based on objective considerations to believe that the REAA does not continue to represent a majority of the employees in the bargaining unit.

12. That the vote on September 21, 1987 by members of the REAA to affiliate with WEAC and establish a UniServ relationship with the REA satisfied due process requirements and the affiliation did not cause any significant changes in the REAA.

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

CONCLUSION OF LAW

That no question concerning representation exists within the meaning of Sec. 111.70(4)(d)3, Stats.

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

ORDER 3/

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

Given under our hands and seal at the City of
Madison, Wisconsin this 22nd day of December, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner
A. Henry Hempe
A. Henry Hempe, Commissioner

- 3/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this

(Footnote 3/ Continued on Page 6)

3/ paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

RACINE UNIFIED SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER

BACKGROUND

The instant petition was filed by the District following a vote by the REAA to affiliate with WEAC and to establish a UniServ relationship with the REA. The issues raised by the petition are whether the District had reasonable cause to believe based on objective considerations that the REAA no longer represented the majority of employees in the bargaining unit and whether the affiliation vote comported with the requirements of due process and caused a change in the REAA sufficient to raise a question concerning representation.

DISTRICT'S POSITION

The District contends that while one labor organization may merge with another and not affect its bargaining representative status, there must be continuity between the predecessor and successor organizations and the affiliation must be accomplished by a procedure which safeguards the free and unfettered choice of the employees. The District argues that the instant affiliation procedure failed to satisfy minimum standards of due process in that there was insufficient notice of the affiliation vote, a lack of opportunity for discussion before the vote, a lack of a secret ballot and a refusal to allow non-members to vote.

The District insists that the first notice of the proposed affiliation vote was the letter dated September 14, 1987, which was delivered after that date probably around September 19, 1987 when Kathleen Doll received her notice. It submits the earlier notice of the meeting merely indicated Ennis was the guest speaker on possible affiliation with REA and was thus wholly inadequate to put employees on notice of a possible vote to affiliate with WEAC. In support of its position, the District cites NLRB case law finding two days notice to be grossly inadequate. It maintains that the REAA assertion that this meeting was well attended and that the members had the opportunity to delay the affiliation vote but voted not to delay same, are without merit because the cause of the large attendance or lack thereof is speculative and the adequacy of notice cannot be decided by those attending. It notes that while the REAA had two separate meetings to enact its name change and a change in bylaws, an affiliation vote, which concededly is more important, was done at a single meeting. The District insists that the evidence noted above establishes that the notice of the vote was inadequate and the affiliation should be set aside.

The District claims that there was inadequate opportunity for discussion and debate on the affiliation. The District asserts that no questions were answered by the REAA Executive Board at the membership meeting on September 21, 1987, even though several employees had questions and had raised their hands, and further argues there was no opportunity for debate once the affiliation motion was pending. It submits that information necessary to make an informed decision was lacking, such as the exact breakdown of dues and the changes in the constitution and bylaws, and the terms of the affiliation agreement with WEAC and/or UniServ agreement with REA. It concludes there was no reasonable opportunity to discuss the affiliation.

The District contends that there was merely a "paper ballot" and not a "secret ballot" vote on the affiliation questions. It defines a secret ballot as a procedure which ensures "no possibility that anyone would be able to determine how a member's vote was cast." The District claims that the ballots were distributed to anyone sitting at the table and marked in the open and then collected. It notes that people were free to move from one part of the room to the other, that no accurate list was maintained and that the vote bears no correlation to the attendance figure. The District therefore argues that the vote cannot be considered secret in any sense.

The District also urges the Commission to find that the refusal to permit non-members to vote on the affiliation renders the vote improper. It notes that while the U.S. Supreme Court has held otherwise under the NLRA, MERA's

underpinnings differ from those of the NLRA and warrant a different result. It argues that in municipal employment, there are constitutional considerations which tip the scale in favor of permitting all employees to vote on an affiliation to protect the employees' First Amendment rights.

The District lastly contends that the affiliation has resulted in sufficient changes in the REAA so as to raise a question of representation. It bases this on the organizing period referred to in various correspondence, the new dues structure, the required changes in the constitution and bylaws, the minimal control of dues by REAA, the loss of REAA control over the decision of who will attend conferences and the absence of Attorney Weber from REAA matters after the affiliation vote. It also notes the opposition to the affiliation by current and former members. It submits that REAA has lost control of its finances, deferred decision-making to REA agents and obtained WEAC counsel. It concludes that the requisite continuity between labor organizations is absent and thus raises a question of representation. It requests the Commission to find the affiliation vote does not meet the due process requirements and/or the affiliation raises a question concerning representation.

REAA'S POSITION

The REAA contends that the District must demonstrate by objective evidence that it had reasonable cause to believe that the REAA no longer represents a majority of the employees. It argues that the District has failed to prove that it has any objective basis for its position. It states that the District's case hinges on a claim that by the affiliation REAA has lost its identity and local control. The REAA notes that the District relies on the hearsay evidence of Kathleen Doll, who was not in attendance when the vote was taken, and of three witnesses, who were in attendance, and contends that their testimony does not provide any objective basis for raising a question concerning representation.

The REAA asserts the Commission has found that "alleged successorship situations" can arise in several different situations, including where an independent local union votes to affiliate with an existing international union. It notes that although the Commission has not ruled on the situation presented herein, it has in other successorship situations discussed the degree of continuity between the predecessor and successor organization and the need for a procedure which safeguards the free and unfettered choice of employees to determine an affiliation. The REAA submits that with the relative dearth of Commission decisions, a review of the cases under the NLRA is necessary and notes that each NLRA case is largely decided by the particular facts of that case.

The REAA, citing NLRB v. Financial Institution Employees of America, Local 1182 4/, contends that an affiliation must satisfy two conditions:

1. The Union members must have an adequate opportunity to vote, i.e., it must be conducted with adequate due process safeguards including notice of the vote to all members, adequate opportunity to discuss the affiliation and reasonable precautions to maintain the ballot secrecy.
2. There must be substantial continuity between the pre- and post-affiliation union.

It points out that these due process requirements were stated by the Court as dicta and the actual holding by the Supreme Court was that non-members could properly be excluded from participating in the affiliation vote. It asks the Commission to reject the District's allegation that non-members' inability to participate in the REAA affiliation vote provides a sufficient reason for setting aside the affiliation vote. The REAA notes that the Supreme Court expressly declined to rule on the minimal due process requirements of an affiliation vote and asserts the Commission also should be reluctant to interfere in the REAA's internal affairs where basic democratic principles have been adhered to.

4/ 475 U.S. 1982 (1986).

The REAA insists that minimal due process requirements were met in the affiliation vote. The REAA notes that affiliation was specifically discussed at the May, 1987 membership meeting and the members authorized a committee to study it and report back in September. The September invitation gave notice of a possible affiliation with REA and the letter dated September 14, 1987 clearly recommended affiliation with WEAC and a UniServ arrangement with REA. It argues that this is not a case of the local purposely withholding information from the membership or the leadership of the local railroading affiliation over the objections of the members. REAA points out that Attorney Weber, Connie Runge and President Keppler all indicated a vote on affiliation could be delayed to a later meeting but the membership overwhelmingly voted to vote at the September 21, 1987 fall meeting because the fall and spring meetings have been the most heavily attended of the quarterly meetings. It notes that the vote was taken in the absence of WEAC or REA representatives.

The REAA insists that there was ample opportunity for members to discuss any concerns and to ask questions concerning the affiliation. It asserts that the District's witnesses claim that they were unable to ask questions is not convincing. It argues that while Christensen claimed her question was on the breakdown of dues, that topic had already been raised and answered after the presentation by Ennis; that Alusic's desire to delay the vote to a later date was rejected by a membership vote; and that Vogt was biased because of comments made by Ennis and was objecting that those who were not in attendance were not able to vote. The REAA contends that those not attending could not vote because the traditional practice as required by the bylaws and constitution was that proxy votes were not permitted. It concludes that this evidence fails to support the District's assertion that there was not sufficient opportunity to discuss the affiliation.

With respect to the District's secret ballot argument, the REAA contends that the voting method used was the same as at other membership meetings. It maintains that at the start of the meeting, those attending were given a membership form and a name tag and members were checked off a master list and all became members except one person who was not allowed to vote. It claims that the ballots were handed out to members and collected and there were no objections as to the handling of the ballots and no evidence that anyone knew how someone had voted. The REAA notes that although Christensen had testified that Mary Hansen had told her that she had observed the husband of a member voting, Hansen was not called to testify. Thus, the REAA argues this double hearsay must be rejected. The REAA contends that although the constitution puts a cap on dues at \$30.00 per year and the dues after affiliation would be \$37.50 per year, this was simply a de minimus flaw which does not warrant Commission intrusion into the REAA's internal affairs. The REAA notes that it enjoys 78% membership support of the bargaining unit and there has been no ground swell of dissatisfaction with the affiliation vote.

With respect to the change in the identity of the REAA, the REAA contends that there has not been a substantial change and that the evidence is clear that the REAA remains autonomous and independent in managing its internal affairs. It submits the REAA is autonomous with respect to collective bargaining decisions, ratification procedures, control of its treasury and its constitution and bylaws. It argues that WEAC recommended two changes in the bylaws; namely, recall procedure for local officers and the retention of membership of one who is appealing his/her termination, and that these are merely changes to ensure democratic principles and not to cede any control to WEAC. It further notes that there was no transfer of property or assets, no change in local officers or any increase in the executive board; that the affiliation can be abrogated at any time; and that the only obligation is that there must be payment of that year's affiliation dues to WEAC and payment of services rendered to date by REA. Based on these factors, the REAA insists that the District's claim of a substantial change in identity is completely without merit. It requests that the petition be dismissed in its entirety.

DISCUSSION

We have held that an employer petitioning for an election in an existing unit must demonstrate, by objective considerations, that it has reasonable cause to believe that the incumbent organization has lost its majority status since its

certification or the date of voluntary recognition. 5/ Here, the District claims that the evidence with respect to the affiliation of the REAA with WEAC and establishment of a UniServ relationship with REA provides reasonable cause to believe that a question of representation is raised. We disagree.

An affiliation of one union with another union can raise a question of representation which would warrant the conduct of an election. We have generally recognized that whether a merger or affiliation raises a question of representation will be determined by: (1) considering the degree of continuity between the predecessor organization and successor organization; and (2) recognizing and giving effect to the desires of the employees which is determined by a procedure which safeguards the free and unfettered choice of said employees. 6/ The NLRB's test is substantially the same. The NLRB has concluded that where an affiliation prompts a union to seek an amendment of a Board certification or prompts an employer to refuse to bargain with the post-affiliation union, the Board will examine the affiliation to determine: (1) whether there was substantial continuity between the pre-affiliation and post-affiliation union and; (2) whether union member had an adequate opportunity to vote. The latter is measured by the following due process requirements:

- (a) adequate notice of the affiliation vote to all members;
- (b) an adequate opportunity for members to discuss affiliation; and
- (c) reasonable precautions are taken to maintain ballot secrecy.

NLRB v Newspapers, Inc., 515 F.2d 334 (CA5 1975), Universal Tool & Stamping Co., 182 NLRB 254 (1970). See also Local 1182, supra, note 4.

While the Commission has not previously set forth specific due process requirements, we think our condition requiring a procedure which "safeguards the free and unfettered choice of said employees" contemplates the same due process requirements applied by the NLRB. Therefore, we will proceed to apply same to the facts in this case.

The evidence in the instant case fails to demonstrate a substantial change in the identity of the REAA. The evidence establishes that the affiliation provided the REAA with lobbying, legal, research, computer, clerical and negotiation support services which they apparently contracted and paid for in the past. The REAA's officers remained the same, its assets and liabilities did not change, and no evidence established a loss of its autonomy. The District pointed to suggested changes by WEAC in the REAA constitution and bylaws but these merely related to recall procedures for officers and the retention of membership while appealing a termination. These minor changes do not establish loss of control by REAA or the takeover of the REAA by WEAC. While the dues have increased, this is no different than the REAA attorney or negotiator raising his fees such that the dues had to increase to cover the additional costs. Given the foregoing, we do not find any significant change in the identity of REAA to have occurred because of the affiliation. Thus, the affiliation itself does not raise a question concerning representation.

Turning to the issue of whether the REAA complied with the due process requirements which an affiliation vote must meet, we initially conclude that compliance must be examined in light of the totality of the circumstances rather than in isolation. Thus, all the facts and circumstances will be considered in determining whether the affiliation vote was conducted with requisite due process safeguards.

5/ School District of Delavan-Darien, Dec. No. 21159 (WERC, 11/83) citing Wauwatosa Board of Education, Dec. No. 8300-A (WERC, 2/68) aff'd Dane County CirCt. 8/68.

6/ Hamilton Joint School District, Dec. Nos. 15765, 15768 (WERC, 8/77).

With respect to the adequacy of the notice of the affiliation vote, the District has argued that there was inadequate notice because Keppler's letter dated September 14, 1987 was not distributed sufficiently in advance. 7/ This argument would carry greater weight if this notice was the only reference to an affiliation vote received by employees. However, affiliation was first discussed at a membership meeting on May 18, 1987, 8/ some four months before the affiliation vote. The interest in affiliation came after REAA representatives attended a conference with other urban aides associations in Oshkosh on April 3, 1987 and a committee was formed to investigate ways to associate or affiliate with another association or group. 9/ The invitation to the fall banquet and meeting gave notice that Jim Ennis would discuss possible affiliation with REA. 10/ The letter of September 14, 1987 advised employees that the affiliation recommendation would be voted upon by the members. 11/ When all these events are viewed in their entirety, it seems quite clear that affiliation had been considered for some time and the members could reasonably be expected to know that the committee would report and make recommendations at the September meeting, and that some action would be taken at that time by the membership. Thus, we conclude that the notice was adequate.

We also conclude that there was sufficient opportunity for discussion and debate of the affiliation. The District has asserted that its witnesses, Christensen, Alusic and Vogt, did not feel that there was sufficient opportunity for discussion based apparently on their questions not being fully answered. We conclude the relevant standard is sufficient opportunity for discussion and not the actual extent and substance of the discussion. 12/ There were a number of speakers on the affiliation issue at the September 21, 1987 meeting and Ennis answered a number of questions after the speeches, including the amount of dues associated with affiliation. After this question and answer period, Attorney Weber indicated that if further discussion was desired, more time could be devoted to this before any vote. 13/ The membership was apparently satisfied that no further time was needed as they decided to vote that evening rather than discuss and consider the matter further and vote at a later meeting. Additionally, after the motion was made and seconded to vote on the affiliation, Keppler asked if there was any further discussion on the motion and the record indicates there was little interest in further discussions. 14/ Thus, we are satisfied that there was sufficient opportunity to discuss the affiliation and that this requirement has been satisfied.

The final due process issue is whether there were reasonable precautions taken to maintain ballot secrecy. The NLRB has not established hard and fast rules regarding the manner in which merger elections must be conducted and, although it has approved elections where the vote was taken by "secret ballot," it has not mandated any particular procedure. 15/ The evidence indicates that printed ballots were distributed to members attending and that the individual members marked them and that the ballots were collected. The District suggests that it was possible for others to see how a person marked his/her ballot. However, there was no persuasive evidence presented that the procedures used did not provide adequate safeguards to ensure secrecy. No credible evidence was

7/ The District cites Peco, Inc., 83 LRRM 1428 (1973) and State Bank of India, 111 LRRM 1015 (1982) which held two days notice was inadequate.

8/ Ex. - 5.

9/ Id.

10/ Ex. - 10.

11/ Ex. - 12.

12/ State Bank of India, 111 LRRM 1015 (1982).

13/ Ex. - 39, p. 34.

14/ Ex. - 39, p. 35, Ex. - 40.

15/ NLRB v. Commercial Letter, Inc., 86 LRRM 2288 (8th Cir., 1974); NLRB v. Financial Institution Employees of America, Local 1182, supra at note 4.

presented that the secrecy of any member's vote was actually violated, that other than members voted, that the votes were not properly collected and counted, or that the vote was tainted by any other impropriety. Thus, we are satisfied that the REAA procedure reasonably ensured ballot secrecy.

The District argues that we should also require as a matter of due process that non-members be allowed to vote on affiliation questions. The U.S. Supreme Court in NLRB v. Financial Institution Employees of America, Local 1182, supra specifically rejected the necessity of allowing non-members to vote on affiliation decisions. We find the Court's holding and rationale persuasive and conclude that where the affiliation does not precipitate sufficient change to alter the union's identity so as to raise a question concerning representation, there is no persuasive reason to question the union's internal decision, as set forth in its constitution and/or bylaws, to permit only union members to vote. Under such circumstances, there is no valid reason to potentially disrupt the stability of the union-employer relationship by requiring a vote in which all unit members could vote. Dissatisfaction with the affiliation decision union members make where the union's identity is not changed may be tested by an employer filed representation election petition only if it is unclear through objective considerations that the post-affiliation union retains majority support. 16/ Thus, we reject the District's argument that members as well as non-members should have been permitted to vote as to the affiliation.

Inasmuch as the requisite due process safeguards in the affiliation vote were met and as we have earlier herein concluded that the affiliation did not significantly change the identity of the REAA, we conclude that there exists no question of representation and have dismissed the District's petition for election filed in this matter.

Dated at Madison, Wisconsin this 22nd day of December, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

16/ The testimony presented by the District herein falls far short of the "objective considerations" necessary for the District to possess a reasonable belief that the REAA had lost its majority status.