

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petitions of  
**RACINE UNIFIED SCHOOL DISTRICT**  
and  
**RACINE EDUCATIONAL ASSISTANTS' ASSOCIATION**

Involving Certain Employees of  
**RACINE UNIFIED SCHOOL DISTRICT**

Case 10  
No. 54308  
ME-846

**Decision No. 10095-E**

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Appearances:

**Mr. Anthony L. Sheehan**, Staff Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P. O. Box 8003, Madison, WI 53708-8003, and **Mr. James Ennis**, Executive Director, Racine Education Association, 516 Wisconsin Avenue, Racine, WI 53403-1051, appearing on behalf of the Association.

**Mr. Frank L. Johnson**, Director of Employee Relations, and **Ms. Keri A. Paulson**, Employee Relations Supervisor, Racine Unified School District, 2220 Northwestern Avenue, Racine, WI 53404-2597, appearing on behalf of the District.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

On July 22, 1996, the Racine Unified School District filed a petition with the Wisconsin Employment Relations Commission seeking to combine two existing bargaining units of educational assistants. On July 29, 1996, the Racine Educational Assistants' Association filed a petition seeking to clarify the existing bargaining units of educational assistants by including the position of health care paraprofessional in one of the units. A hearing on both of the

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petitions was held on May 7, 1997, in Racine, Wisconsin, before Douglas V. Knudson, a member of the Commission's staff. A stenographic transcript was made of the hearing and a copy of the transcript was received on June 2, 1997. Post-hearing briefs were submitted by July 17, 1997. The Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

### **FINDINGS OF FACT**

1. The Racine Educational Assistants' Association, herein the Association, is a labor organization with offices at 516 Wisconsin Avenue, Racine, Wisconsin 53403.

2. The Racine Unified School District, herein the District, is a municipal employer with offices located at 2220 Northwestern Avenue, Racine, Wisconsin 53404.

3. On February 25, 1971, following an election conducted by the Commission, the Association was certified as the exclusive collective bargaining representative for a unit consisting of "all teacher and clerical aides employed by Unified School District No. 1 of Racine County, Racine, Wisconsin, excluding supervisors and employees employed in other bargaining units."

4. 1993 Wisconsin Act 16, which took effect on August 12, 1993, modified the Sec. 111.70(1)(b), Stats., definition of "collective bargaining unit" to read "a unit consisting of municipal employees who are school district professional employees or of municipal employees who are not school district professional employees that is determined by the commission to be appropriate for the purpose of collective bargaining" and added Sec. 111.70(1)(ne), Stats., defining a "school district professional employee" as "a municipal employee who is employed by a school district, who holds a license issued by the state superintendent of public instruction under s. 115.28(7), and whose employment requires that license."

5. On January 14, 1994, the District filed a petition requesting the Commission to separate the above-described bargaining unit into two separate units, one consisting of educational assistants who met the statutory definition of "school district professional employees" and the other consisting of the educational assistants who were not "school district professional employees." In May of 1994, the parties voluntarily stipulated to separate the then existing unit into two bargaining units described as follows:

#### Unit 1 (certified)

All full-time and part-time educational assistants who hold a license issued by the State Superintendent of Public Instruction under Sec. 115.28(7), and whose employment requires that license, excluding supervisors and confidential employees and all other employees.

and

Unit 2 (non-certified)

All full-time and part-time educational assistants who are not required to have a license from the Department of Public Instruction, excluding supervisors and confidential employes and all other employes.

6. 1995 Wisconsin Act 27, which took effect July 29, 1995, amended the definition of a "school district professional employe" by replacing "a municipal employe who is employed by a school district, who holds a license issued by the state superintendent of public instruction under s. 115.28(7), and whose employment requires that license" with "a municipal employe who is a professional employe and who is employed to perform services for a school district."

7. In May of 1996, the parties executed a separate collective bargaining agreement for each of the units set forth in Finding of Fact 5 above. Those agreements covered the time period of August 26, 1993 through June 30, 1995, and were identical in content in all relevant aspects, with the exception of the recognition clauses.

8. On July 22, 1996, the District filed a petition requesting the Commission to merge the two bargaining units of educational assistants into one unit. On July 29, 1996, the Association filed a petition requesting the Commission to include ten "paraprofessional" positions in one of the educational assistant units.

9. There are approximately 400 educational assistants, of whom approximately 154 are certified (i.e. DPI licensed) and approximately 245 are not certified. Most of the non-certified assistants primarily perform classroom duties in assisting teachers with students. Some of the non-certified assistants work in offices primarily performing clerical duties, some function as hall monitors, some work as lunchroom assistants, and 7 or 8 of them work in the research and development department under the direction of research associates, who are professional employes and are in the teacher bargaining unit. Most of the certified assistants usually work in classrooms with exceptional education students. Some of the assistants perform physical therapy duties, while others work with hearing impaired students. All assistants who work in classrooms, whether certified or non-certified, report to teachers. Some of the non-certified assistants who do not work in classrooms report to principals. Some of the certified assistants do provide medical services to students, e.g., tube feeding, catheterizations, shunts, and giving medications. One of the positions in the certified unit is a Classroom LPN at the Wadewitz Elementary School. Many, perhaps a majority, of the assistants, both certified and non-certified, work seven and one-half hours a day and have a work year of 188 days. However, other assistants have different work weeks and work days. A review of recent job postings in the non-certified unit reveals the following work weeks, in addition to the most common work week of 37.5 hours: a Home/School Activity Coordinator works 3.5 hours per week; Lunchroom Assistants each work 10 hours per week, as does a Reading Mastery Assistant; two Even Start Bilingual Assistants each work 12 hours per week; a Bilingual Kindergarten Assistant works 15 hours per week; P-5 Assistants each work 15.75 hours per week; a Truancy Program Assistant works 17.5 hours per week; a P-COC Assistant at the Washington

Center works 17.8 hours per week; an Office Assistant at North Park Elementary School and a W-T-R Assistant at Fratt

Elementary School each work 30 hours per week; and an Extended Day Kindergarten Assistant, a W-T-R Assistant at the Dr. Jones Elementary School, and a Behavior Monitor each work 20 hours per week. Further, the Research Assistants work 52 weeks a year, rather than the 188 days worked by the other assistants. A review of recent job postings in the certified unit reveals the following work weeks, in addition to the most common work week of 37.5 hours: a Classroom LPN works 40 hours per week; an Ex Ed-ED at Park High School works 30 hours per week; an Ex Ed-OI Matron at Wadewitz Elementary School and an Ex Ed-ED at Jerstad Middle School each work 20 hours per week; and an Ex Ed-Primary ED at Gifford works 17.5 hours per week.

10. The salary range for all assistants, both certified and non-certified, is from \$7.13 to \$13.50 per hour. The same application form is used for applicants for all assistant positions, both certified and non-certified.

11. The District first hired health care paraprofessionals, or medical dispensers, for the 1996-97 school year to dispense medications and to provide first aid to students. Previously, those duties had been performed primarily by secretarial and clerical employees. Ten such employees were hired. Said employees work in the nursing offices at the schools and report to the nursing staff. The paraprofessionals must have CPR and first aid certifications and some general training or work experience in a medical/health field. A paraprofessional works 3 hours per day and has a work year of 185 days. Paraprofessionals are paid \$8.40 per hour and do not have a salary range.

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

### **CONCLUSIONS OF LAW**

1. 1993 Wisconsin Act 16's amendment of Sec. 111.70(1)(b), Stats., and creation of Sec. 111.70(1)(ne), Stats., made it inappropriate for educational assistants who were "school district professional employees" (i.e. certified educational assistants) to be included in the same bargaining unit as educational assistants who were not "school district professional employees" (i.e. non-certified educational assistants).

2. Under the modified definition of a "school district professional employe" in the 1995 Wisconsin Act 27, certified educational assistants were no longer professional employes, and thus a combined unit of certified and non-certified educational assistants again became appropriate under Sec. 111.70(1)(b), Stats.

3. The certified and the non-certified educational assistants share a sufficient community of interest so as to make the continuation of two units inappropriate, particularly in light of the anti-fragmentation policy set forth in Sec. 111.70(4)(d)2.a., Stats.

4. A bargaining unit consisting of all regular full-time and regular part-time educational assistants, both certified and non-certified, employed by the Racine Unified School District, excluding managerial, supervisory, confidential and all other employes is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

5. The occupants of the health care paraprofessional positions share a sufficient community of interest with the educational assistants to be included in the bargaining unit described in Finding of Fact 4 above.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER CLARIFYING BARGAINING UNIT**

The two existing bargaining units of educational assistants shall be merged into one bargaining unit, which unit will then consist of all regular full-time and regular part-time educational assistants, both certified and non-certified, employed by the Racine Unified School District, excluding managerial, supervisory, confidential and all other employes, and the occupants of the health care paraprofessional positions shall be included in said bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

Paul A. Hahn /s/  
Paul A. Hahn, Commissioner

RACINE UNIFIED SCHOOL DISTRICT

**MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

**POSITIONS OF THE PARTIES**

The District contends that the two units of educational assistants should be combined now that the certified assistants no longer fall within the statutory definition of a school district professional and in view of the community of interest shared by the two groups. However, the health paraprofessionals lack a community of interest with the educational assistants and should not be included in the same bargaining unit with the assistants.

The Association contends that the two units of assistants were created by stipulation of the parties three years ago. The units have not changed in composition; therefore, those units continue to be appropriate. The Commission's role is to determine whether units are appropriate, not to determine the most appropriate unit. The Commission should allow the parties to achieve bargaining stability and should not combine the two units. A separate unit of ten health care paraprofessionals would constitute undue fragmentation. The paraprofessionals share a sufficient community of interest with the non-certified educational assistants and should be accreted to that unit.

**DISCUSSION**

The educational assistants, both certified and non-certified, were all in one bargaining unit from the time the Association was certified as the bargaining representative in 1971 until the parties stipulated in 1994 to split the unit into two units as a result of 1993 Wisconsin Act 16. Act 16 made the existing unit inappropriate because it included both professional and non-professional school district employees (i.e. certified and non-certified educational assistants). The parties did negotiate separate contracts for the two units for the 1993-95 time period. Said contracts were virtually identical in all relevant aspects, with the exception of the recognition clauses. 1995 Wisconsin Act 27 altered the definition of a "school district professional employee" so that a unit of certified and non-certified assistants was no longer inappropriate. Thus, the Commission must determine whether, in light of such a change, it is appropriate for the two units to continue or if the units should be merged into one unit.

When resolving appropriate unit issues, we consistently consider the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.

3. The similarity of wages, hours and working conditions of employes in the unit sought as compared to wages, hours and working conditions of other employes.
4. Whether the employes in the unit sought share separate or common supervision with all other employes.
5. The degree to which the employes in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. *ARROWHEAD UNITED TEACHERS V. WERC*, 116 Wis.2d 580 (1984).

As the Commission stated in *NORTHEAST TECHNICAL COLLEGE*, DEC. NO. 11602-A, (WERC, 11/95):

We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the employes participate in a shared purpose through their employment. We have also used the phrase "community of interest" as a means of determining whether employes share similar interests, usually -- though not necessarily -- limited to those interests reflected in Factors 2-5. This definitional duality is of long-standing, and has received the approval of the Wisconsin Supreme Court, citing *ARROWHEAD UNITED TEACHERS V. WERC*, 116 Wis.2d 580, 592 (1984)

The fragmentation criterion reflects our statutory obligation to "avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal workforce." Section 111.70(4)(d)2.a., Stats.

The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employes have been unrepresented, an analysis of the development and operation of the employe/employer relationship. *MARINETTE SCHOOL DISTRICT*, DEC. NO. 2700 (WERC, 9/91).

Based upon longstanding Commission precedent, we believe it is well understood by the parties that within the unique factual context of each case, not all criteria deserve the same weight *SHAWANO-GRESHAM SCHOOL DISTRICT*, DEC. NO. 21265 (WERC, 12/83); *GREEN COUNTY*, DEC. NO. 21453 (WERC, 2/84); *MARINETTE COUNTY*, DEC. NO. 26675 (WERC, 11/90) and thus a single criterion or a combination of criteria listed above may be determinative. Common purpose, *MADISON METROPOLITAN SCHOOL DISTRICT*, DEC. NOS. 20836-A AND 21200 (WERC, 11/83); similar interests, *MARINETTE SCHOOL DISTRICT*, SUPRA; fragmentation, *COLUMBUS SCHOOL DISTRICT*, DEC. NO. 17259 (WERC, 9/79); bargaining history, *LODI JOINT SCHOOL DISTRICT*, DEC.

No. 16667 (WERC, 11/78).

There are some differences between the two groups of assistants. To become certified by the Wisconsin Department of Public Instruction, an assistant must have either three years of college, three years of working with students outside the home, or, a combination of the two. The certified assistants work with exceptional education needs students, which work may require skills not required of the non-certified assistants who work with regular education students. However, the assistants all participate in a shared purpose which is to assist teachers and other educational professionals in the education process. All assistants have common wage schedules and fringe benefits. Bargaining history and the anti-fragmentation policy in the Municipal Employment Relations Act also support the appropriateness of a single unit.

Considering all of the foregoing, we conclude the continued existence of the two educational assistant units is inappropriate given the fragmentation it produces, the parties' bargaining history, and the substantial community of interest between the two groups of educational assistants. Merger of the two units will return the parties to the bargaining status which had existed for over twenty years prior to the short-lived change in the statutory language. Now that said change in the statutory language has been eliminated, it is no longer appropriate to have two units of educational assistants.

We are also persuaded the health care paraprofessionals share a sufficient community of interest with the educational assistants to make their inclusion in the same bargaining unit appropriate. The paraprofessionals work in the same buildings as do the assistants. Some of the assistants, e.g., lunchroom assistants, hall monitors and research assistants, also work in locations other than classrooms. Although many of the assistants work more hours in a week than do the paraprofessionals, some of the assistants also work less than 20 hours per week. The facts that the paraprofessionals have a set wage rate, rather than a wage schedule, and do not receive any fringe benefits appear to be a result of the recent creation of the position, i.e., for the 1996-97 school year, whereas the position of educational assistant has existed since at least 1971. The differences between the paraprofessionals and the educational assistants are not sufficient to justify a separate unit for the paraprofessionals. Such a unit would unduly fragment the District's work force.

Dated at Madison, Wisconsin, this 17th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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