STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WAUKESHA COUNTY TECHNICAL EDUCATORS ASSOCIATION/WEAC/NEA

Involving Certain Employes of

WAUKESHA COUNTY TECHNICAL COLLEGE

Case 3 No. 14667 ME-661 | Case 99 No. 56024 ME-3650

Decision No. 11076-C

In the Matter of the Petition of

WAUKESHA COUNTY TECHNICAL COLLEGE PART-TIME UNITED FACULTY/WEAC/NEA

Involving Certain Employes of

WAUKESHA COUNTY TECHNICAL COLLEGE

Case 100
No. 56025
ME-3651

Decision No. 29564

Appearances:

Attorney Stephen Pieroni, Staff Counsel, and **Attorney Laura Amundson,** Associate Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the Waukesha County Technical Educators Association, WEAC, NEA and the Waukesha County Technical College Part-time United Faculty/WEAC/NEA.

Quarles & Brady, S.C., by **Attorney David B. Kern,** 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of Waukesha County Technical College.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

On January 20, 1998, the Waukesha County Technical Educators Association, WEAC, NEA, filed a petition with the Wisconsin Employment Relations Commission seeking an

election in a bargaining unit of certain professional employes of the Waukesha County Technical College described in the petition as:

> All professional employees who work 50% or more excluding supervisors, managerial, confidential, clerical, paraprofessional, custodian/maintenance employes.

That same day, the Waukesha County Technical College Part-Time United Faculty, WEAC, NEA, also filed a petition with the Commission seeking an election in a bargaining unit of certain professional College employes described in the petition as:

> All professional employees who are employed less than 50% but excluding supervisors, managerial, confidential, clerical, paraprofessional, custodian/maintenance employees.

On May 6 and 8, 1998, the parties met with Examiner Peter Davis in an effort to resolve issues raised by the petitions and by a Motion to Dismiss filed by the College on April 23, 1998. Those efforts proved unsuccessful and hearings were thereafter held by Examiner Davis on June 10 and July 13, 1998.

During the hearing, the Association and United Faculty amended their election petitions by asking that if the two proposed units were found inappropriate, then the Commission should conduct an accretion election among all unrepresented professionals to determine if said employes wished to be represented by the Association. If the Association won the accretion election, then the unrepresented employes would be merged with the represented employes in a new overall professional bargaining unit. The College contends that all of the potential units sought are inappropriate and that the only appropriate unit for the unrepresented employes is a residual bargaining unit. Neither the Association nor United Faculty seek an election in a residual unit.

The parties filed written argument, the last of which was received December 10, 1998.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Waukesha County Technical College, herein the College, is a municipal employer having its principal offices at 800 Main Street, Pewaukee, Wisconsin. The College provides educational services to certain citizens of the State of Wisconsin.

2. The Waukesha County Technical Educators Association, WEAC, NEA, herein the Association, is a labor organization which has served as the collective bargaining representative of certain professional employes of the College since 1967. The 1995-1998 collective bargaining agreement between the College and the Association describes the collective bargaining unit represented by the Association as follows:

> . . . all regular full-time teaching personnel, including department chairpersons and guidance counselors, all regular part-time teaching personnel who teach daytime credit classes and all regular part-time teaching personnel who teach daytime adult basic education classes.

3. The Waukesha County Technical College Part-time United Faculty, WEA,NEA, herein United Faculty, is a labor organization.

4. As reflected by the unit description contained in Finding of Fact 2, the College and the Association have consistently agreed over the years to limit the scope of the bargaining unit as to teachers to those who teach credit or adult basic education classes (ABE) during the day. Thus, under the parties' agreement, employes who teach only in the evening are excluded from the unit without regard to how much work they are performing and despite the fact that they may perform the same work as unit employes, albeit at a different time of day.

The existing daytime/credit or daytime/ABE unit consists of approximately 160 full-time employes, 40 employes who work between 50% and 100% of a full-time workload (contractually identified as Part-Time II employes), and 100 employes who work less than 50% of full-time workload (contractually identified as Part-time I employes). Under the parties' contract, the full-time employes are fully covered by various provisions contained therein and the Part-time II employes are covered by most contractual provisions, including placement on the full-time employe salary schedule on a prorated basis. Part-time I employes receive a bargained hourly wage ($18.70 to $27.20 depending on the type of class taught and the employe's years of service) but all other provisions of the contract are inapplicable to them. The College pays the approximately 550 non-unit teaching employes the same hourly wage as is received by Part-time I employes.

5. Under the two new bargaining units proposed by the Association and United Faculty, all existing unit distinctions between day and evening work and between credit and non-credit work would be irrelevant. The amount of work performed (as measured by the workload formula in the 1995-1998 contract) would become the basis for determining in which of the two new bargaining units an employe would be included. Part-time I employes in the existing unit would be included in the new "less than 50%" employe unit and those currently unrepresented employes who perform "50% or more" of a full workload would become part of the new "50% or more" unit.

6. All professional employes of the College have a shared purpose of educating students.

7. The essential duties, skills and qualifications of all professional teachers employed by the College are fundamentally the same.

8. Because a "50% or more" unit will primarily consist of those employes in the existing bargaining unit with significant wages, fringe benefits and contractual protections, the wages, hours and working conditions of employes in a "50% or more" unit will at least initially be significantly distinct from the wages, hours and working conditions of employes in a "less than 50%" unit.

There will be substantially more turnover among the employes in the "less than 50%" unit.

The College exercises greater care when it hires an employe who will teach "50% or more" than when it hires an employe who will teach "less than 50%."

There will be some interchange between the employes in the two proposed bargaining units based on changing workloads and the hiring of "less than 50%" employes to fill vacancies in the "50% or more" unit.

9. Professional teaching employes of the College are subject to limited supervision. What supervision exists is structured along program lines without regard to whether the employes are "50% or more" or "less than 50%". A majority of the College's supervisors supervise employes who work "50% or more" as well as "less than 50%" employes.

10. The vast majority of the employes in the proposed "50% or more" unit work at the College's main Pewaukee campus. Approximately one third of the employes in the proposed "less than 50%" unit also work at the Pewaukee campus. The "less than 50%" employes are much more likely to be working at one of the numerous scattered work sites in the community than are the "50% or more" employes.

11. The two proposed units will not unduly fragment the professional workforce.

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

CONCLUSIONS OF LAW

1. The two proposed bargaining units of "50% or more" professional employes and "less than 50%" professional employes are not appropriate units for the purposes of collective bargaining within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. A collective bargaining unit consisting of all regular full-time and regular part-time professional employes of the Waukesha County Technical College excluding supervisors, and confidential, managerial and executive employes is an appropriate unit for the purposes of collective bargaining within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. A question concerning representation within the meaning of Secs. 111.70(4)(d)2.a., Stats. exists within the collective bargaining unit set forth in Conclusion of Law 2.

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

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 60 days from the date of this Direction among all regular full-time and regular part-time unrepresented professional employes of the Waukesha County Technical College excluding supervisors, and confidential, managerial and executive employes who were employed on February 25, 1999, 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 such employes voting desire to be represented for the purposes of collective bargaining by the Waukesha County Technical Educators Association or desire to be unrepresented.

If a majority of the voting employes elect to be so represented by the Association, all currently unrepresented professional employes and all professional employes in the existing Association bargaining unit will then be combined in a new collective bargaining unit consisting of all regular full-time and regular part-time professional employes of the Waukesha County Technical College excluding supervisors and confidential, managerial and executive employes.

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of February, 1999.

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

Waukesha County Technical College

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

APPROPRIATE UNIT ISSUE

Positions of the Parties

The Unions

In their initial brief, the Association and United Faculty (herein the Unions) assert that the two proposed bargaining units are appropriate because they allow for representation of the unique interests and aspirations of the "50% or more" and the "less than 50%"employes.

The Unions seek the two new units because the existing Association unit is no longer appropriate for the purposes of collective bargaining. Because the mission and educational offerings of the College have evolved since the unit's formation in 1967 and subsequent reformation in the 1970's, the Unions contend that the existing unit does not consist of employes with a community of interest with respect to wages, hours and conditions of employment.

By contrast, the Unions claim there can be little doubt that a unit comprised of all professional employes working "50% or more" is an appropriate bargaining unit. The Unions argue that the "50% or more" unit structure is the state-wide standard among technical colleges in Wisconsin. This "industry standard" provides tacit recognition that such employes have a community of interest which produces viable bargaining units. The Unions argue the Commission followed this industry standard in NICOLET TECHNICAL COLLEGE, DEC. NO. 23366 (WERC,3/86).

They contend that NICOLET establishes the Commission's recognition of the unique interests and aspirations of resident faculty when compared with part-time hourly employes. The Unions also note that the Wisconsin VTAE Board and Wisconsin VTAE certification standards define full-time employment and full-time employes as working "50% or more."

The Unions argue another compelling factor supporting the appropriateness of a "50% or more" unit is that the work available to "less than 50%" employes is dependent upon there being sufficient enrollment in the courses they teach. Thus, the Unions contend these part-time employes cannot expect to make a career out of teaching for the College and will not share interests in job security and retirement benefits with the "50% or more" employes.

The Unions further argue that the "50% or more" employes will see their supervisors more often, share a more common workplace, and are more likely to perform duties beyond teaching (service on committees, developing curriculum, keeping office hours, attending staff meetings) than do the "less than 50%" employes. The Unions allege there is also a substantial disparity between the wages and fringe benefits enjoyed by the "50% or more" employes and those who work "less than 50%."

The Unions urge the Commission to discount the College's argument regarding the impact of bargaining history when determining whether the proposed units are appropriate. The Unions contend that the College's effort to extend the "deal is a deal" policy to election proceedings should be rejected. They argue that their failure to attempt to organize part-time employes with a high degree of turnover is only a reflection of the tremendous effort required to organize such a disparate group. The Unions further note that to a large extent, the existing bargaining unit consists of employes who work "50% or more" -- the same unit configuration now sought. Indeed, the Unions assert that the factor of bargaining history thus supports the proposed units because for the purposes of compensation and fringe benefits, the College has historically dealt with the "less than 50%" employes as a group.

Given all of the foregoing, the Unions allege the "50% or more" bargaining unit is an appropriate one.

Turning to the propriety of the "less than 50%" unit, the Unions argue that much of the same evidence supporting the appropriateness of the proposed "50% or more" unit is applicable and persuasive. In addition, the Unions note that two such units currently exist following Commission elections at other technical colleges in Wisconsin. Further, the Unions point out that the College uses different recruitment and hiring procedures for the "less than 50%" employes.

Given all of the foregoing, the Unions allege that a "less than 50%" unit is also appropriate for the purposes of an election.

Should the Commission conclude that the two proposed units are not appropriate, the Unions seek an accretion election to determine whether all currently unrepresented professional employes wish to become part of an overall professional unit represented by the Association. The Unions assert that such an election would produce an appropriate bargaining unit of all regular full-time and regular part-time professional employes if the employes select the Association. They further allege that such an overall unit would allow the parties to bargain a uniform system of wages, hours and conditions of employment without regard to the existing artificial unit distinctions based on the time of day work is performed and whether a class is "for credit."

The Unions argue that bargaining history is irrelevant to the legitimacy of an accretion election. They assert that by its very nature, an accretion election will reconfigure the existing unit and that the Commission has therefore never considered bargaining history when determining the propriety of an accretion election.

Given all of the foregoing, the Unions contend that the Commission should direct an election in one of the unit configurations they seek.

The College

The College urges dismissal of the election petitions because none of the bargaining units therein sought is appropriate.

The College contends that the Unions not surprisingly give short shrift to the parties' 30 year bargaining history which has produced the existing unit configuration. The College asserts that this long and complex history has served the parties well and produced a mutually acceptable unit of employes who share a community of interest generated by their common work-all teach daytime credit or daytime adult basic education courses. Given this common work, the College alleges that the employes in the existing unit also share a similarity of hours when work is performed, supervision, and work place which distinguishes them from the non-unit teachers.

Because there have been no significant changes in the circumstances present when the parties voluntarily created the existing bargaining unit structure, the College argues that the Commission's "deal is a deal" policy should work against the Unions' position in this case. The College acknowledges that the "deal is a deal" policy evolved in unit clarification proceedings but asserts that conceptually the policy should be found to apply to the instant election proceeding.

The College contends the two bargaining units sought by the Unions are arbitrary and inappropriate. The College asserts that the absurdity of the Unions' position is best demonstrated by considering whether an employe with a 48% work load shares a greater community of interest with an employe who has a 52% work load or with an employe who has a 10% work load. The Colleges alleges the answer is obvious and strongly at odds with the Unions' proposed use of a 50% work load as the dividing line between the two units.

The College further contends that the Unions have not even been able to articulate how it would be determined which employes fell within which unit. The Unions' statement that the parties would simply apply the existing contractual "workloading formula" to determine whether an employe is working "50% or more" is not a useful answer where, as here, the parties have never applied the workload formula to certain types of work. The College argues that the Commission ought not be given the "hopeless task" of guessing how employes would be placed in one or the other of the proposed units.

The College asserts that the Unions' reliance on the NICOLET decision is misplaced. It argues that the factual context before the Commission in NICOLET was substantially different than the context present herein. Among other matters, the College notes that unlike NICOLET,

employes presently excluded from the bargaining unit perform the same work and have the same qualifications as unit employes.

The College argues that the existence of "50%" units elsewhere in Wisconsin and the existence of a "50%" VTAE Board standard are both irrelevant to the outcome of this case. Aside from NICOLET, the "50%" units were all voluntarily established and the record does not contain any evidence as to the community of interest or lack thereof of the employes in said units or as to the basis upon which the parties found it acceptable to agree to their creation. What the VTAE Board chooses to do for purposes unrelated to unit determinations is irrelevant to this proceeding.

Given all of the foregoing, the College asserts the two units proposed by the Unions are not appropriate.

Turning to the Unions' alternative request for an accretion election, the College argues that the overall unit potentially created by such an election is not appropriate. It contends that there is no community of interest between the full-time faculty and the part-time teachers and that the interests of the full-time faculty would be submerged in such a unit.

The College alleges the only appropriate unit for an election among the non-unit employes is a residual unit. Such a unit respects the parties' bargaining history and is consistent with the community of interest shared by the non-unit employes as to work hours, working conditions(no day time classes), and supervision.

Inasmuch as the Unions have not asked for an election in such a residual unit, the College asks that election petitions be dismissed.

DISCUSSION

Several observations should be made at the outset. First, we would note that where we are called upon to decide whether the unit or units sought are appropriate for the purposes of collective bargaining, the question is **not** whether the unit sought is **the most** appropriate unit but rather whether the unit sought is **an** appropriate unit. MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91). Second, our analysis is limited to the propriety of those units within which a union seeks an election. Thus, a union's unwillingness to seek an election in an appropriate unit proposed by the employer does not impact on whether the unit sought by the union is **an** appropriate unit.

When exercising our statutory discretion to determine whether a proposed bargaining unit is appropriate, we have consistently considered the following factors:

1. Whether the employes in the unit sought share a "community of interest" distinct from that of other employes.

2. The duties and the skills of the employes in the unit sought as compared with the duties and skills of other employes.
3. The similarity of wages, hours and working conditions of employes in the unit sought as compared to the wages, hours and working conditions of other employes.
4. Whether the employes in the unit sought share separate of 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.

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. 1/

1/ ARROWHEAD UNITED TEACHERS V. WERC, 116 WIS.2D 580, 592 (1984):

> ***. . . when reviewing the Commission's decisions, it appears that the concept (community of interest) involves similar interests among employes who also participate in a shared purpose through their employment. (Emphasis supplied)***

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." 2/ 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. 3/ Although listed as a separate component, under some circumstances, analysis of bargaining history can provide helpful insights as to how the parties, themselves, have viewed the positions in question in the past from the standpoint of both similar interests and shared purpose. Based upon long-standing 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 4/ and thus a single criterion or a combination of criteria listed above may be determinative. 5/

2/ Section 111.70(4)(d)2.a., Stats.

3/ MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91).

4/ 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).

5/ ***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).

Applying the foregoing to the "50% or more" and "less than 50%" units proposed by the Unions, we find them to be inappropriate.

Looking first at the issue of Factor 1 "community of interest", we have held and so hold here that all professional employes of the College participate in the shared purpose of providing educational services to citizens. NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 11602-A (WERC,11/95). This shared purpose/community of interest exists whether or not a professional employe is teaching "50% or more" or "less than 50%."

As to Factor 2, the duties and skills of the teachers employed by the College are fundamentally the same. While employes working "less than 50%" are far less likely to serve on committees, do curriculum work etc., the essential duties and skills of all College teachers are the same-effectively educating students in the classroom. These essential duties and skills are shared by all professional educators at the College- whether or not they work "50% or more" or "less than 50%." Under Wisconsin law, the certification requirements/qualifications needed to teach are the same whether or not the educator works "50% or more" or "less than 50%." It is also noteworthy that employes on both sides of the proposed 50% dividing line would teach credit and non-credit classes.

As to Factor 3, the "50% or more" unit would primarily consist of current bargaining unit members who share similar wages, hours and working conditions. However, this unit will include some employes who are not currently represented and to that limited extent will include employes with dissimilar wages, hours and working conditions. The employes in the "less than 50%" unit will primarily come from the ranks of the currently unrepresented who share similar wages, hours and working conditions. The currently represented employes who would be placed in this unit (the Part-time 1 employes) have acquired little beyond a wage rate through the collective bargaining process and their wage rate is utilized by the College as the rate applicable to all unrepresented teachers. Thus, the "less than 50%" unit would consist of employes with quite similar wages, hours and working conditions.

The record also confirms the common sense notion that there is much more turnover among part-time as opposed to full-time or almost full-time (Part-time II) employes and the related notion that part-time employes are thus much less likely than full-time employes to view their College employment as a career. Therefore, the College exercises substantially less

care when it hires a "less than 50%" part-time employe than when it hires a "50% or more" employe. As argued by the Unions, this evidence is generally supportive of there also being distinctive interests on matters such as job security and retirement benefits between the employes in the two proposed units.

Turning to Factor 4, the limited supervision exercised over any College teacher is based on the program structure of the College and not whether an employe is working "50% or more" or "less than 50%." A majority of the supervisors at the College supervise employes who work "50% or more" as well as "less than 50%" employes.

Factor 5 presents a mixed picture. The vast majority of the "50% or more" unit employes and about a third of the "less than 50%" employes teach at the College's main Pewaukee campus. The "less than 50%" employes are much more likely to work at the numerous scattered teaching locations than are the "50% or more" employes.

As to Factor 6, given the size of the workforce, the two proposed bargaining units would not constitute undue fragmentation contrary to the dictates of Sec. 111.70(4)(d) 2.a., Stats.

Lastly, we look at Factor 7 "bargaining history." For the last 30 years, the parties have bargained within the context of a unit they themselves defined. The proposed units mix employes who are in the existing bargaining unit with those who are not and thus conflict with the long standing manner in which the College has dealt with its represented and unrepresented employes.

Reviewing the evidence as to Factors 1-5, although it is a close question, we do not find definitive support for the Unions' position that the two proposed units will each consist of employes with a distinctive and cohesive community of interest.

All employes have a "shared purpose", and essentially the same duties, skills, qualifications and supervision. Work locations are shared to some extent by the employe in both proposed units, although a substantial preponderance of each unit will tend to work at different sites. Thus, as to Factors 1-5, only Factor 3 and to lesser extent Factor 5 provide substantial support for there being a distinctive community of interest between the two units.

Important to our determination is our unwillingness to accept the concept that an educator working 48% of the time has a distinctive community of interest from the 52% educator. If there were no actual employes whose workloads fall within close proximity of the "50%" demarcation line, we could justifiably be criticized for using a theoretical argument with no real world consequences. However, the evidence in this case demonstrates that our concern is not simply theoretical. There are significant numbers of employes whose workload appears to typically fall within close proximity to the "50%" line. Although the record does not provide a definitively accurate view of the numbers of employes working various

percentages (despite the best efforts of the parties), 40-50 employes may be employed 50-59% with at least an equivalent number being employed 40-49%.

While the proposed units do not run afoul of the statutory prohibition against undue fragmentation, the evidence as to bargaining history works strongly against a conclusion that the two proposed units are appropriate for the purposes of collective bargaining.

Given the lack of sufficient "community of interest" support for the proposed units and the disruption they represent to the existing bargaining relationship, we conclude they are not appropriate units.

Our conclusion is not at odds with the Commission's 1986 decision in NICOLET. Because there was no existing long standing bargaining relationship present in NICOLET, the "bargaining history" factor did not play a significant role in the Commission's analysis. Further, the Findings of Fact in NICOLET contain more evidence supportive of a viable "50%" community of interest standard than is present in this record.

As argued by the College, the existence of voluntarily created "50%" units in other Wisconsin technical colleges is not particularly relevant to this proceeding. Our task is to decide the issue based on the evidence presented as to this College and its professional employes.

Similarly, we give no weight to the VTAE standards cited by the Unions. Those standards reflect the judgments of a different agency applying a different statute reflecting different policies and purposes.

Having concluded that the two proposed units are not appropriate, we turn to the question of whether the alternative of an accretion election is viable.

An accretion election would give the currently unrepresented employes the opportunity to decide whether they wished to be represented by the Association for the purposes of collective bargaining. If the Association was selected, the unrepresented employes would join the represented employes as part of a new overall bargaining unit consisting of all regular full-time and regular part-time employes.

Measuring the appropriateness of such an overall unit in terms of community of interest (Factor 1 alone and Factors 2-5), it is apparent that an overall unit passes muster. As discussed earlier herein, all regular full-time and regular part-time employes share a common educational purpose. They share common duties and skills, qualifications, supervision and to some extent work places. We acknowledge that such a unit would combine employes with presently differing wages, hours and conditions of employment.

An overall unit is obviously consistent with the fragmentation concerns reflected in Factor 6.

As to Factor 7, an overall unit does run afoul the bargaining history criterion inasmuch as it disrupts the existing bargaining relationship.

The College strenuously argues that an overall unit is inappropriate because the interests of the full-time faculty will be submerged and the existing bargaining relationship disrupted. However, on balance, we are persuaded that the community of interest factors discussed above are sufficient to overcome these legitimate concerns and warrant a conclusion that an overall unit is appropriate for the purposes of collective bargaining.

VOTER ELIGIBILITY ISSUES

The Association asserts that if current unit employes also perform the same work as the currently unrepesented employes, said employes should be eligible to vote in the accretion election. The College disagrees contending the Association is "trying to have its cake and eat it too."

We conclude no employes in the existing unit are eligible to vote in the accretion election. The accretion election is among currently unrepresented employes. If we were to allow existing bargaining unit employes to vote, we would in effect be allowing employes to vote on whether to join themselves. Thus, we reject the Association's position as to this voter eligibility issue.

Because some employes regularly teach a class which is offered only once a year (i.e. during the summer, fall or spring semesters), the parties have agreed that any employes working at least 12 hours during one of several semesters is eligible to vote. They disagree as to which semesters should be used to determine eligibility. The Association proposes a three semester period which would end with the semester in which the election petitions were filed (i.e. spring 1998). The College argues for use of a six semester period ending with the semester during which the Commission directs an election.

Absent agreement by the parties, our standard practice is to use the date the Direction of Election is issued as the basis for determining voter eligibility. This practice reflects the obviously appropriate interest in having the most current employe complement determine the question of representation. We see no reason to depart from that standard here. Therefore, employes who meet the 12 hour eligibility standard for the current spring of 1999 semester are obviously eligible to vote. Based on the record before us as to courses not being taught every semester, we further conclude it is appropriate to incorporate the preceding two semesters as well. Thus, eligibility will be based on meeting the 12 hour standard during either the summer of 1998 semester, the fall of 1998 semester or the spring of 1999 semester. However, as stated during the hearing and reflected in our Direction of Election, any employe who met the eligibility standard in the summer or fall of 1998 semesters but who has since been discharged for cause or quit employment is not eligible to vote.

The parties agree that employes who work only as substitute teachers are not eligible to vote. They disagree as to whether substitute hours worked by a regular part-time employe should be counted toward the 12 hour eligibility standard. The Association asserts that to the extent the work in question is bargaining unit work performed by a regular part-time employe, substitute work should be counted. The College argues the substitute work is done on a casual or occasional basis, the work hours should not count. In the context of this case, we conclude that if an employe routinely accepted substitute work such that it became part of the employes regular work during at least two of the three eligibility semesters, such substitute hours should be counted for the purposes of eligibility.

BALLOTING ISSUES

The parties disagree over how the election should be conducted. The Association seeks an on-site election at the Pewaukee and Waukesha campuses. The College seeks a mail ballot election.

In the most recent comparable election we have conducted among professional employes of a VTAE college with multiple work sites [MADISON VTAE COLLEGE, DEC. NO. 28655-A (WERC, 4/96)], we determined that a mix of on-site balloting and mail balloting best served the interests of the eligible voters and our need to efficiently use our limited resources. We will conduct such a mixed balloting process here.

Lastly, we note that because the election potentially affects the existing unit, we have reopened our file in WAUKESHA COUNTY TECHNICAL COLLEGE, CASE 3, and added those case numbers to the decision caption.

Dated at Madison, Wisconsin this 25th day of February, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISISON

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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