

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

KENOSHA EDUCATION ASSOCIATION

Involving Certain Employees of

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1

Case 25

No. 49466 ME-655

Decision No. 11293-D

Appearances:

Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, by Ms. Nancy L. Pirkey, and Mr. Clifford B. Buelow, for the Employer.

Ms. Melissa A. Cherney, Staff Counsel, and Ms. Chris Galinat, Associate Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708-8003, for the Association.

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

On January 27, 1994, the Kenosha Education Association filed with the Wisconsin Employment Relations Commission a petition to clarify an existing bargaining unit by including therein the position of Part Time Police Services employe, which petition the Kenosha Unified School District No. 1 opposed. Hearing in the matter was held on October 18, 1994, in Kenosha, Wisconsin, before Hearing Examiner Stuart Levitan, a member of the Commission staff. A stenographic transcript was made available to the parties by November 2, 1994. The Association and District filed written arguments on December 21 and December 22, 1994, respectively, and reply briefs on January 25 and January 31, 1995. The Commission, being fully advised in the premises, hereby issues the following

FINDINGS OF FACT

1. The Kenosha Education Association, hereafter the Association, is a labor organization with offices at 5610 - 55th Street, Kenosha, Wisconsin.

2. Kenosha Unified School District No. 1, hereafter the District, is a municipal employer with offices at 3600 - 52nd Street, Kenosha, Wisconsin. The Association represents five

No. 11293-D

bargaining units of District employes which respectively consist of teachers, substitute teachers, educational assistants, carpenters and painters. The District also employs secretarial staff represented by AFSCME, custodial/maintenance personnel represented by Service Employees International Union, and interpreters represented by an independent union.

3. The "educational assistant" bargaining unit is described in the parties' 1993-1995 contract as:

all regular full-time and regular part-time educational assistants employed by the District, including the following categories: noon hour supervisors, instructional educational assistants, special education educational assistants, speech educational assistants, learning disability educational assistants, resource educational assistants, library educational assistants and social work educational assistants, but excluding voluntary (unpaid) educational assistants, professional employes, supervisory and managerial personnel, confidential employes, temporary employes, hearing impaired/interpreters and bus educational assistants.

There are approximately 300 individuals, representing a lesser number of full-time positions, in this unit.

4. Among the positions included in the bargaining unit identified in Finding of Fact 3 is that of Temporary Security Aide (Full Time), now known as Security Educational Assistant. A still-valid job specification, dated January 23, 1975, provided as follows:

TEMPORARY SECURITY AIDES
(Full Time)

NUMBER OF POSITIONS - 26

Each Junior High School (3):	15
Each Senior High School (4):	8
Evening High School:	3

TOTAL	26

JOB SPECIFICATION

To work under the direction of school principals and supervise school corridors, washrooms, and school entrances.

Prevent unauthorized persons from entering buildings. Maintain

general school decorum in all school areas not actively supervised by certificated personnel. Prevent theft of, and damage to school property and personal belongings of building occupants.

Qualifications include:

1. High school graduation.
2. Experience working with children.
3. Good command of the English language.
4. Good physical and emotional health.
5. Empathy for children.
6. Tactful, discreet, ethical (can be trusted to keep information confidential).
7. Ability to cooperate with others on the staff.
8. Ability to enhance the public image of the school.
9. A good moral character.
10. Ability to profit from pre-service and in-service instruction.
11. Willingness to attend pre-service and in-service meetings.

None of the Security Educational Assistants have any experience or training as police officers.

5. For full-time positions included in the bargaining unit described in Finding of Fact 3, the current collective bargaining unit provides for a three-step salary schedule, with a top rate in the 1994-95 school year of \$7.68, a variety of paid leaves, and employer contribution to health and life insurance and a retirement fund. Part-time positions are paid \$6.72 per hour for 1994-95, with no benefits. The collective bargaining agreement provides all educational assistants with a grievance procedure culminating in appeal to the School Board.

6. In the spring of 1993, Robert Crist, principal of McKinley Junior High School, became concerned over various security threats, culminating in a reported threat of a gang-related drive-by shooting. Crist related his concerns to Superintendent Anthony F. Bisciglia, who authorized use of a contingency fund, on an emergency basis, to hire an off-duty Kenosha Police Department (KPD) officer to provide added security. Crist offered a part-time, unbenefitted appointment to KPD Officer Randy Wilson, who was already serving as the McKinley boys' basketball coach and whose KPD patrol area included the environs of the school. Based on what he felt was the great success of this pilot program, but still concerned over increased problems of discipline and truancy, Crist, together with the principal of Washington Junior High School, proposed formally re-allocating current funding for lunchroom supervision to hire additional off-duty police officers. In a supplemental memorandum to Bisciglia on August 18, 1993, they proposed an agreement whereby the officers would receive \$9.36 per hour, which they noted was "the rate of pay that officers receive who are employed

to pick up bank deposits from individual schools," and no insurance or other benefits. On September 14, 1993, Bisciglia and Assistant Superintendent Gerald R. Euting submitted to the District Board the following memorandum:

Part Time Police Services Request

The principals at Washington and McKinley Junior High Schools have submitted a proposal concerning part time police services at the two schools. The proposal has been further clarified by a follow-up memorandum which is attached to the basic proposal.

The two schools are seeking permission to employ off duty police officers (no weapons and no uniforms) on a part time basis for the purpose of providing improved supervision in non-classroom settings, i.e., lunchrooms, hallways, and sidewalks outside of the school before and after school.

Employment at each school will be listed to a maximum of fifteen hours per week and money to support this effort will be shifted from existing funds which are already included in the budget under the Fund 10 and Effective Schools accounts.

It is recommended that the proposal be approved and the schools be allowed to proceed as soon as possible.

At its meeting of September 21, 1993, the Board unanimously approved a motion "to adopt the recommendation of administration and to allow the other three junior high schools to adopt this program at their schools if they choose to do so." A "position specification" for the position of Part Time Police Services dated September 22, 1993, provides as follows:

ORGANIZATIONAL RELATIONSHIPS

1. Report and account to the principal/designee.
2. In cooperation with the principal, assume responsibility for various services within the school community.

PRIMARY FUNCTION

Assume responsibilities assigned by the principal for assisting in investigations, escorting truant students to school,

establishing communications between parents and school officials, and coordinating appropriate efforts between the Kenosha Police Department and the school principal.

RESPONSIBILITIES

Responsibilities for this position include but are not limited to:

1. Investigating crimes as they relate to the school environment.
2. Conducting home visits to speak with the parents/guardians of students who are truant from school. This individual will transfer messages, provide appropriate information to parents, and schedule meetings with school administrators.
3. Conducting visits to homes or other establishments in an effort to escort truant students to school.
4. Participating in discussions with parents and the principal/designee concerning truancy, behavior problems, and criminal activities in the school or such activities in which the school may have an interest as a result of an incident in the community.
5. Coordinating appropriate communications between the Kenosha Police Department and the school principal concerning student issues (i.e. criminal activities, gang activity, on-going police investigations).
6. Providing supervision as directed by the principal.

QUALIFICATIONS

1. EDUCATION: a high school degree from an accredited school with additional studies in police and criminal investigations, minimal due process of law, and statute/municipal/civil law.
2. SKILLS, KNOWLEDGE, ABILITIES: demonstrated skill in observing, conducting

interviews with parents of students, and assisting in criminal and behavioral referral investigations.

knowledge of the scope and relationships of the position to the total educational program, and sufficient knowledge and understanding of functions related to the position to provide support for an effective school operation. This individual must be employed off-duty police officer.

demonstrated sound judgement, social competency, adaptability, self-confidence, emotional maturity, initiative, rapport with students, ability to utilize police department investigative techniques, as well as, dedication and the ability to act consistently in carrying out assigned duties.

The operational reality of the Police Services employes is consistent with this position specification. While serving as Police Services employes, the off-duty police officers neither wear their police uniforms nor carry firearms. On at least one occasion, a Police Services employe has effectuated the arrest of an alleged perpetrator of an apparent criminal offense. The power of arrest possessed by the Police Services employes flows from their employment as police officers by the City of Kenosha.

7. The District employs nine part-time security drivers, embodying two unrepresented positions, who collect monies from the various school buildings for deposit into local financial institutions. Their shifts run approximately three to four hours per day, four days per week. As conditions of employment, these drivers must be non-probationary law enforcement officers holding a valid, Wisconsin driver's license. Effective October 1, 1993, the hourly rates for security drivers and police services employes were set at \$9.48 for 1993-94 (which rate was paid retroactively) and \$9.86 for 1994-95. Neither security drivers nor police services employes receive fringe benefits. While performing their duties, the drivers do not wear police uniforms, but do carry one or more firearms. The drivers have no significant contact with students. The security drivers report to the supervisor of finance.

8. As of the date of hearing, there were Police Services employes assigned to three junior high schools and two senior high schools, working variable, part-time schedules. Individual school principals make the hiring decision on their own authority, subject to funding availability. Personnel so hired receive a letter notifying the District's office of personnel services of their hire; they receive no formal notice of employment, or any written material concerning their wages, hours and conditions of employment.

9. The work of the personnel employed by the Kenosha Unified School District No. 1

as Police Services employes does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

10. The personnel employed by the Kenosha Unified School District No. 1 as Police Services employes share sufficient community of interest with the members of the bargaining unit described in Finding of Fact 3 to make appropriate their inclusion therein.

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

CONCLUSIONS OF LAW

1. The Police Services employes of the Kenosha Unified School District No. 1 are not professional employes within the meaning of Secs. 111.70(1)(L) and (ne), Stats.

2. Inclusion of the positions referred to in Conclusion of Law 1 in the bargaining unit described in Finding of Fact 3 would result in an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

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

ORDER 1/

The Police Services employes of the Kenosha Unified School District No. 1 be, and hereby are, included in the bargaining unit represented by the Kenosha Educational Assistants Association described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of August, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

1/ See footnote on pages 8 and 9.

Herman Torosian /s/

Herman Torosian, Commissioner

William K. Strycker /s/

William K. Strycker, Commissioner

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- 1/ 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 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.

(footnote continued on page 9.)

1/ (footnote continued from page 8.)

(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.

KENOSHA SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

In support of its position that the Police Services employees should be accreted to the bargaining unit, the Association argues as follows:

The police service employees share a community of interest with the members of the educational assistants unit, in that they both share the common purpose of supporting the District's educational mission through supportive, rather than instructional, services, specifically derived from their common purpose of enhancing school safety throughout a common work area, the school building and/or grounds. Further, there is a similarity in hours (part-time), benefits (none for the subject employees, and none for part-time educational assistants), and shared supervision. There are no employees with a greater community of interest with the subject employees than those in the educational assistants unit.

The police service employees do not meet either the statutory definition of "professional employe" or "school district professional employe." Because they do not hold a license issued under Sec. 115.28(7), Stats., they are not school district professional employees. And because their accreditation as police officers did not require a "prolonged course of specialized intellectual instruction," they are not general professional employees either.

As the subject positions are currently unrepresented, are not professional, have numbers which do not justify an entirely separate bargaining unit, and have a sufficient community of interest with the educational assistants unit, the Commission should accrete the police service employees into the existing unit of Educational Assistants.

In support of its position that Police Services employees should not be accreted into the educational assistants unit, the District argues as follows:

The position of police services employe is professional, in that the training needed to become certified as a law enforcement officer is equivalent to obtaining an advanced degree. Also, the position requires independent judgment and discretion, performing non-routine work in an unsupervised context. As professional employes, the police service positions cannot be commingled with non-professional positions.

Further, the subject positions have the power of arrest, and cannot be included in a unit with civilian employes. It is the possession of the power of arrest, and not the extent or frequency with which an employe exercises that power, that is the deciding factor; as it is undisputed that the subject positions have the power of arrest, they cannot be included in any unit with civilian employes. The unique situation of these employes drawing their arrest powers from their full-time jobs as police officers does not change the fact that they hold such power.

Further, the subject positions do not share a community of interest with the educational assistants bargaining unit. Placement of a position into an existing unit is warranted only if the record demonstrates a compelling community of interest between the disputed position and the positions presently in the unit. Because of differences in their funding source, and an overall lack of commonality in their wages, hours and conditions of employment, the police services employes do not have a community of interest with the educational assistants bargaining unit.

Accordingly, the Commission should recognize the subject positions as professional and properly excluded from the educational assistants bargaining unit.

In its reply brief, the Association posits further as follows:

The subject positions are not required to have a prolonged course of intellectual instruction or the equivalent thereof and thus are not professional employes under MERA. The 400 hours of law enforcement training the subject positions undergo does not satisfy the case law or statutory requirement for professional status.

Further, because the subject employes' power of arrest derives from their employment with a separate employer, it cannot be used to exclude them from a bargaining unit with the Kenosha School

District. The basis for the Commission's separation of employes with and without power of arrest is Sec. 111.77, Stats; but as the provisions of that statute apply only to cities and counties, and not school districts, the ban on mixing employes has no relevance when the employer in question is a school district.

Further, police services employes share a greater community of interest with the educational assistants bargaining unit than with the security drivers. Like the subject positions, members of the unit work part-time with no benefits; are required to hold a particular license; work at each school; interact with students, and share the common goal of providing direct, supportive services to the educational function.

Accordingly, the police services employes should be accreted to the Kenosha Educational Assistants bargaining unit.

In its reply brief, the District posits further as follows:

The Association ignores many relevant facts that demonstrate the unique duties performed by police service employes; the Commission should not be misled by this attempt to demonstrate a similarity between the subject positions and the security assistants.

The Association concession of the fact that the subject positions have the power of arrest is sufficient itself for the WERC to deny the petition. It is well-settled that employes with the power of arrest are not appropriately included in a bargaining unit with other employes, and that it is the possession of such power, not the frequency of its usage, that is determinative.

The subject position employes do share a community of interest with the security drivers, in that they are all off-duty Kenosha police officers performing support services and working sporadic part-time schedules, earning \$9.86 hourly without any benefits.

The police services employes do meet the definition of professional employes under MERA; the Association conveniently ignores the fact that the WERC does not limit the definition of professional employe solely to those employes with a 4-year college degree, instead requiring specialized knowledge through an advanced degree from a school of higher learning. The 400 hours of specialized

training which is a necessary condition of employment as a Kenosha police officer satisfies the commission's test for professional status.

Because the police services employees do not share a community of interest with the educational assistants bargaining unit due to their status as professional employees with the power of arrest, the commission should deny and dismiss the petition.

DISCUSSION

The District asserts that we should not include the subject positions in the educational assistants' bargaining unit because the Police Services employees are professional, have the power of arrest, and share insufficient community of interest with the positions in the existing unit. We reject all three arguments, and order the inclusion of the subject positions in the bargaining unit.

Regarding the issue of the Police Services employee's alleged status as a "professional employee," the parties disagree over which statutory definition is applicable herein. The Association contends that with the passage of 1993 Act 16, Sec. 111.70(1)(ne), Stats.,^{2/} becomes the only operative definition of professional employees of school districts. The District asserts that Sec. 111.70(1)(ne), Stats., does not displace Sec. 111.70(1)(L), Stats.^{3/}

2/ As created by Act 16, Sec. 111.70(1)(ne), Stats., provided:

(ne) "School district professional employee" means 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.

3/ Section 111.70(1)(L), Stats., defines a "professional employee" in pertinent part as follows:

1. Any employee engaged in work:
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

(footnote continued on page 14.)

Effective July 29, 1995, Sec. 111.70(1)(ne), Stats., was amended to provide:

"School district professional employe" means a municipal employe who is a professional employe and who is employed to perform services for a school district.

In our view, the reference in amended Sec. 111.70(1)(ne), Stats., to "professional employe" makes the definition of "professional employe" found in Sec. 111.70(1)(L), Stats., determinative.

Turning to the definition of "professional employe" found in Sec. 111.70(1)(L), Stats., we are satisfied that the Police Services employe's work meets the first three criteria of the Sec. 111.70(1)(L), Stats., definition. However, because we are satisfied that the work does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning, their work does not satisfy the fourth criterion and they are not a "professional employe" within the meaning of Sec. 111.70(1)(L), Stats.

As argued by the Association, in Marinette County, Dec. No. 26675 (WERC, 11/90), we generally concluded law enforcement training does not meet the "prolonged course of specialized intellectual instruction and study" test of Sec. 111.70(1)(L)1.d., Stats. Thus, because the District's "professional" argument hinges on the 400 hours of training needed for law enforcement officer certification, we find it unpersuasive.

We turn now to the issue of power of arrest. In City of Sturgeon Bay, Dec. No. 27106 (WERC, 12/91) we concluded that where an employe's power of arrest does not come from the employer involved in the Commission representation proceeding, the possession of the power of arrest does not preclude the employe's inclusion in a unit of employes who do not have the power of arrest. Here, the Police Services employe's power of arrest does not come from the District but rather from the City of Kenosha. Thus, the power of arrest does not bar inclusion of the Police Services employes in the educational assistant unit.

Finally, we turn to the matter of community of interest. Section 111.70(1)(b) of the Municipal Employment Relations Act (MERA) defines a "collective bargaining unit" as "the unit determined by the Commission to be appropriate for the purpose of collective bargaining." In determining whether the unit sought is appropriate, the Commission must consider Sec. 111.70(4)(d)2.a. of MERA which provides, in part, as follows:

3/ (footnote continued from page 13.)

d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of

higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; . . .

The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a 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 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 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.

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

employees 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. 4/

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." 5/

The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. 6/ 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.

4/ 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 employees who also participate in a shared purpose through their employment. (Emphasis supplied.)

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

6/ Marinette School District, Dec. No. 27000 (WERC, 9/91).

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 7/ and thus a single criterion or a combination of criteria listed above may be determinative. 8/

There are facts which support both parties. In the Association's favor, we note that the subject positions share with the existing unit the same broad purpose, namely providing support services in furtherance of the District's educational mission. More particularly, they share a close similarity of purpose with the security aides, in that both groups focus their support mission on safety and security. The subject positions share common supervision with other unit

7/ 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).

8/ 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).

members, namely building principals. There is a degree of commonality of workplace, namely the school building and grounds. Further, these part-time employees share with part-time unit personnel a lack of fringe benefits.

In the District's favor, the wage rate paid the Police Services employes is substantially higher than the rate for educational assistants. Further, the level of responsibility and skills displayed by the subject position surpasses that of the security aides; even the most diligent and knowledgeable security aide does not possess the experience and expertise of an off-duty Kenosha Police Department officer. However, it is also fair to say that there is some overlap in the duties of the security aides and the Police Services employes, particularly in the area of building and student supervision.

The bargaining history criterion is of no relevance because these are newly created positions.

Finally, there is the statutory mandate to avoid undue fragmentation. If the Police Services employes are not included in the educational assistant unit, they would still be eligible for union representation, possibly in a separate Police Services employe unit. The inclusion of the position within an existing bargaining unit is more consistent with our obligation to avoid fragmentation than would the creation of a separate unit.

Given all of the foregoing, we are satisfied that there is a sufficient community of interest between the Police Services employes and other unit employes to make inclusion appropriate, particularly given the mandate to avoid undue fragmentation.

Thus, we have ordered inclusion of the position in the unit.

Dated at Madison, Wisconsin, this 2nd day of August, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner