

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petitions of  
  
**MADISON TEACHERS, INC. and  
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**  
  
Involving Certain Employees of  
  
**MADISON METROPOLITAN SCHOOL DISTRICT**

Case 20  
No. 49620  
ME-658

**Decision No. 12654-E**

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Appearances:

Cullen, Weston, Pines & Bach, LLP., by **Attorney Gordon E. McQuillen**, and **Attorney Shana R. Lewis**, 122 West Washington Avenue, Suite 900, Madison, Wisconsin 53703, appearing on behalf of Madison Teachers, Inc.

**Mr. Michael J. Wilson**, Representative at Large, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

**Attorney Duane M. McCrary**, Director of Labor Relations, and **Attorney Malina R. Piontek Fischer**, Assistant Director of Labor Relations, Madison Metropolitan School District, 545 West Dayton, Madison, Wisconsin 53703 appearing on behalf of Madison Metropolitan School District.

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

On September 11, 2000, Madison Teachers, Inc. filed a petition with the Wisconsin Employment Relations Commission (Commission) seeking to clarify that a newly created position of School Security Assistant should be placed in an existing unit of educational assistants represented by Madison Teachers, Inc.

No. 12654-E

On October 20, 2000, Wisconsin Council 40, AFSCME, AFL-CIO filed a petition with the Commission seeking to clarify that the position of School Security Assistant should be placed in an existing unit of custodial/maintenance employees represented by Wisconsin Council 40, AFSCME, AFL-CIO.

Informal attempts to resolve the dispute proved unsuccessful.

In a letter to the parties dated March 26, 2001, Commission Examiner McLaughlin stated:

. . . I write to clarify the status of the file. As I understand it, there may be a dispute on whether the School Security Assistant Position should be placed in a separate bargaining unit or accreted to an existing unit. Whether or not the unit should be separate would appear to pose more a legal than a factual dispute. If, however, the issue is whether the position should be accreted to an existing unit, then it would appear the dispute is factual in nature.

Please advise me on your position concerning the following points:

- (1) Should the School Security Assistant position be placed in a separate unit?
- (2) If the answer to (1) is "yes," can you stipulate to an election?
- (3) If the answer to (1) is "no," can the propriety of a separate unit be resolved on a stipulated record?

. . .

In a letter filed with the Examiner on March 30, 2001, Wisconsin Council 40, AFSCME, AFL-CIO stated:

. . . The answer to your question in "no", the School Security Assistant should not be placed in a separate bargaining unit. The facts can be stipulated to and a hearing is not essential . . .

In a letter filed with the Examiner on April 2, 2001, Madison Teachers, Inc. stated:

. . . It is the position of Madison Teachers, Inc., that the School Security Assistants employed by the Madison Metropolitan School District should not be placed in a separate collective bargaining unit. Thus the answer to your first question is "No." That means there is no need to answer your second question.

Our answer to the third question also is "No" . . .

In a letter filed with the Examiner on April 5, 2001, the Madison Metropolitan School District stated:

. . . The District asserts that regarding question #1, our position would be that the Security Assistants should be allowed to decide whether they wish to be included in a separate unit or no unit at all. The District can stipulate to an election so that the Security Assistants may determine whether they wish to be represented.

Since our response to question #1 is in the affirmative, (the District does) not wish to respond to question . . . #3 . . .

Hearing on the matter was conducted by Examiner McLaughlin in Madison, Wisconsin on September 5, 2001. The parties filed briefs and reply briefs by November 20, 2001.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. Madison Metropolitan School District, hereinafter the District, is a municipal employer with its principal offices located at 545 West Dayton, Madison, Wisconsin.
2. Madison Teachers, Inc., hereinafter MTI, is a labor organization having its principal offices located at 821 Williamson Street, Madison, Wisconsin.
3. Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter AFSCME, is a labor organization having its principal offices located at 8033 Excelsior Drive, Madison, Wisconsin.
4. The District provides educational services as authorized under the laws of the State of Wisconsin. Included in the physical facilities through which the District provides its services are four high schools, eleven middle schools and twenty-nine elementary schools. Some of the District's employees are represented by labor organizations. The District's represented employees compose eight bargaining units: (1) teachers; (2) substitute teachers; (3) supportive education employees (clerical/technical); (4) educational assistants; (5) custodial and maintenance employees; (6) food service employees; (7) building trades employees, including painters, steamfitters, plumbers and electricians; and (8) building trades employees including carpenters. The unit listed at (4) above is hereinafter referred to as the EA Unit. The unit listed at (5) above is hereinafter referred to as the Custodial Unit.

5. MTI serves as the exclusive collective bargaining representative for the EA Unit. Section I, B of a collective bargaining agreement between the District and MTI, for the period August 20, 2000 through August 17, 2002, describes that unit thus:

. . . (A)ll regular full-time and regular part-time educational assistants employed by the Madison Board of Education, Joint School District No. 8, (Madison Metropolitan School District) directly or indirectly assisting professional staff in the instructional program including teacher educational assistants, resource center educational assistants, library educational assistants, special education assistants, nurse's assistants bilingual educational assistants, clerical educational assistants, and counselor educational assistants, but excluding all lunchroom and playground supervisors, and all other employees.

The Commission certified MTI as the exclusive bargaining representative for this unit of employees in MADISON BOARD OF EDUCATION JOINT SCHOOL DISTRICT NO. 8, DEC. NO. 12654 (WERC, 6/74). As of the date of hearing, there were approximately 693 employees in this bargaining unit. Included in the unit are employees classified as Educational Assistant (EA); Nursing Assistant (NA); Special Education Assistant (SEA) and Special Educational Assistant II (SEAI). There were 163 employees in the unit classified as EAs, forty classified as NA, fifty-one classified as SEAI, and the balance classified as SEA.

6. AFSCME serves as the exclusive collective bargaining representative for the bargaining unit of custodial and maintenance employees. Section 2.01 of a collective bargaining agreement between the District and AFSCME, for the period August 20, 2000 through August 17, 2002, describes that unit thus:

. . . (A)ll regular full-time and regular part-time employees engaged in custodial, maintenance and related duties except clerical, craft, professional, confidential, supervisory and administrative employees . . .

The District voluntarily recognized AFSCME as the exclusive representative of this unit, which includes approximately 243 employees. Employees represented by AFSCME staff the District's Building Services Department. The Department includes two divisions: Engineering and Operations. AFSCME represents three Maintenance Worker positions in the Engineering Department, which provides trades-type maintenance to District facilities as well as renovation and construction work. The vast majority of unit positions are in the Operations Department, through which the District provides custodial services, grounds care and delivery services.

7. EAs perform a variety of tasks supportive of the teaching function. Although all EAs spend a considerable portion of their workday with students, the amount of contact time varies from position to position. For example, an employee in the position of Clerical EA will

typically spend a larger portion of their time in administrative work than other EAs or an SEA, who may spend ninety percent of their work day in student contact. Position descriptions and job postings reflect this variance. The “Skills” section of the Clerical EA position description reads thus:

- Experience with school age children.
- Basic computer knowledge.
- Familiarity with office and audio visual equipment.
- Ability to work alone.
- Perform repetitive work-frequent typing, data entry.
- Work under instructions.
- Perform a variety of duties.
- Ability to communicate effectively with diverse students and staff orally and in writing.
- Ability to follow written and/or oral directions and communicate clearly.
- Ability to empathize with children and remain composed and patient with difficult behavior.
- Ability to implement behavior management programs under supervision.
- Ability to maintain student confidentiality.

The “Skills” section of the EA Bilingual position description reads thus:

- Ability to understand, speak, read, and write fluent English and the first language of the student(s) he/she will be assisting.
- Ability to empathize and understand various cultures.
- Ability to assist teacher in (adaptation) of existing materials to meet individual needs of Limited English Proficiency students.
- Ability to implement instruction given by professional educator.
- Ability to communicate effectively with diverse student, staff and community, oral and written.
- Ability to maintain student confidentiality.
- Work requires walking, lifting, climbing, bending, reaching and kneeling.

The “Skills” section of the EA-Chapter 1 position description reads thus:

- Ability to work with small groups of educationally disadvantaged elementary students under the Chapter 1 teacher’s direction.
- Ability to follow Chapter 1 teacher’s and/or other professional educators’ directions.
- Ability to understand and manage possible behavioral problems in a professional manner.

- Ability to work with students who are educationally disadvantaged.
- Ability to maintain student confidentiality.
- Ability to communicate effectively with diverse student, staff and community, oral and written.
- Work requires walking, lifting, climbing, bending, reaching.and kneeling.

The “Skills” section of a posting for the EA (In-school suspension room) for Sherman School reads thus:

- Experience working with middle school children.
- Excellent communication & interpersonal skills.
- Ability to assist teacher with classroom management.
- Assist students in developing social skills under a teacher's direction.
- Provide instructional assistance in small groups on one-to-one.
- Ability to work with a diverse student population including variety of ages, cognitive abilities
- Ability to deal with sensitive issues as they relate to different minority groups and socio-economic levels.
- Ability to assist in working with students on different multicultural issues as they relate to the understanding of the various cultural groups.
- Ability to deal with and monitor student behavior.
- Ability to maintain student confidentiality.
- Ability to take direction, learn quickly and work closely with the teacher and other team members.
- Training in conflict resolution and knowledge of the Sherman community is a plus.

Duties of positions within the SEA classification also vary depending on, among other factors, the school and student(s) involved. A posting for EA/SEA positions for Allis and Elvehjem Elementary Schools typifies the duties in its “Essential Functions” section thus:

- Assist teacher with instructional program and classroom management.
- Provide instructional assistance in small groups or one-to-one.
- Assist in the preparation of instructional materials.
- Maintain, set up, clean, sort supplies and equipment.
- Supervise lunchrooms, recess, playground, and hallways.
- Other related duties as directed.
- Work with a wide range of students with cognitive disabilities and/or multiple disabilities including transfers, applying adaptive devices, tube feedings, diapering, bathroom assistance, and mobility training.
- Maintain records including data collection, (i.e.: charting seizure activities).

Assist with feeding of students.  
Provide instructional reinforcement to students in the classroom and at community-based sites under the direction of a teacher.  
Assist students individually and in small groups with academic and recreational programming under a teacher's direction.  
Monitor and manage student behavior consistent with behavioral management programs.  
Develop social skills under a teacher's direction.  
Diffuse conflict situations.  
Provide assistance in transporting students between classrooms and other areas included in the school program. Assist with loading and unloading school buses, help supervise field trips, and help professional staff with dressing and undressing students at the beginning and end of the school day.  
Supervise lunchrooms, recess, playground, and hallways.  
Other related duties as assigned.

The SEA II classification is a recent creation, with a position description that reads thus:

### **ESSENTIAL FUNCTIONS**

Provide instructional (academic, behavior, social) reinforcement to students needing support from SEA II across school, community and vocational environments (may also provide instructional reinforcement to the student needing support within small groups of students and as part of other instructional arrangements).  
Implement curriculum and behavioral intervention plans across environments, under the direction and guidance of a teacher and/or related services staff.  
Monitor and implement positive behavior strategies in dealing with student behavior, including aggressive behavior.  
Work with students who demonstrate verbally or physically aggressive behavior.  
Provide support for physical and daily living skills including assistance with transfers, use of adaptive devices, bathroom assistance and mobility training.  
Complete nursing procedures under the direction of the school nurse (e.g., tube feeding).  
Provide assistance to students needing support from SEA II when student moves between school environments and locations in the community.  
Assist in communication with parents/legal guardians under the direction of a teacher and/or related services staff.  
Maintain communication with other staff to provide feedback regarding the performance of the student needing support from the SEA II.

Participate in data collection activities (e.g., assignment completion, behavior management, academic achievement).

Provide supervision during lunch, recess, playground, hallways and field trips for the student needing support from the SEA II (and other students as appropriate).

Work with students who are nonverbal or who do not have intelligible speech.

Participate in training and inservice programs.

Complete other related duties as assigned.

Assist with the preparation of instructional materials under a teacher's direction.

Maintain records.

Attend collaborative planning meetings.

Provide assistance and support for physical and daily living skills including eating, bathroom skills, safety awareness, grooming, transfers, use of adaptive devices and mobility training.

## **REQUIRED KNOWLEDGE, SKILLS & ABILITIES**

Demonstrate knowledge of and ability to appropriately restrain students (following training and given student-specific restraint protocol) and/or supervise students in a "safe-space" setting.

Ability to adjust levels of direct support to the student needing support from the SEA II in order to promote independence in skill performance.

Ability to provide instruction in a variety of school and community environments.

Ability to implement programs as designed by teachers in a variety of environments.

Ability to maintain student and family confidentiality.

Ability to gather data used to document student's progress in areas such as behavior management, academic achievement and health/physical status.

Ability to implement, under a teacher's guidance, student's behavior intervention plan.

Ability to work with students who exhibit verbally and/or physically aggressive behaviors.

Ability to implement nursing procedures under a nurse's guidance.

Ability to contribute information to the student's instructional team.

Ability to communicate effectively with diverse students, staff and community members, orally and in writing.

Ability to consistently use proper hygiene practices as prescribed by MMSD health policies.

Ability to gain CPR certification; maintenance of CPR certification required.



The “Essential Functions” section of a posting for an NA position at Midvale Elementary School illustrates the duties of the classification, and reads thus:

- Provide basic emergency care for illness or injury.
- Monitor students’ health status during periods of short-term rest or recovery.
- Administer medications and carry out nursing procedures under the delegation of the school nurse.
- Notify appropriate personnel of emergency situations, including parents, physicians, building personnel , and hospitals.
- Order and maintain all necessary supplies and equipment in the health office.
- Maintain cleanliness of health office, including health office laundry.
- Assist in school health screening follow-up.
- Prepare bulletin board displays.
- Other related duties as assigned.

The District requires NAs to have CPR certification and First Aid certification. NAs must also be a licensed RN, LPN or have successfully completed an approved school nurse assistant course. The District considers CPR and First Aid certification a desired qualification for EAs.

8. Custodial and maintenance employees perform a variety of duties necessary for the operation, maintenance and improvement of District facilities. A job posting for Maintenance Worker details the duties of the position thus:

- Repair, maintain and install building equipment, including door closures, pumps and motors.
- Maintain building grounds, including grass cutting and trimming, snow removal, tree and brush trimming, aeration, fertilization, and irrigation.
- Maintain and operate grounds equipment, including tractors, snow removal equipment, rototillers and aeration equipment.
- Operate, repair and maintain heating, ventilating and air conditioning systems, including compressors, electrical and mechanical controls, filters, motors, pumps, coils, and piping systems.
- Perform or assist trades workers, district technicians and/or contractors with installation, maintenance and repair of various building components.
- Operate, repair and maintain components of high school swimming pools. including chlorination, filtration, ventilation, and mechanical circulation systems.
- Open building, start equipment, and perform building security check.
- Assist in preparation of facilities to accommodate building permits.
- Other related duties including grounds, custodial and laundry work.

A posting for Custodial Worker I details the duties of the position thus:

- Sweep and mop floors, stairways and bathrooms.
- Clean, dust, and polish office and/or school equipment.
- Collect and dispose of waste, including trash.
- Move furniture including, chairs, tables or other equipment.
- Maintenance of area outside of building including: raking, mowing and watering lawns, shoveling snow, removing snow and ice, and washing windows.
- Clean lunchroom.
- Set up chairs and tables for special meetings.
- Replace burned out lights.
- Unload lunch truck.
- Perform uncomplicated maintenance duties including repair of lockers, window latches and door hinges in school building
- Other related duties as assigned.

Similar postings for the classification of Custodial Worker II and III incorporate these duties and add the following:

- Direct work of custodial worker(s)
- Monitor use of facilities by groups issued a building permit
- Check and secure building at end of the shift

A posting for Building Custodian I states the duties of the position thus:

- Preparation of daily work schedule.
- Train, direct and inspect the work of the custodial staff.
- Performance, coordination and direction of cleaning and maintenance.
- Maintenance of building systems in proper working condition, including boiler.
- Performance, coordination and direction of grounds work for building, including snow removal.
- Assist in maintenance of records and reports, including building permits and supply inventory.
- Related duties as directed.

Similar postings for Building Custodian II include the same description of duties. A posting for Groundworker I describes the duties of the position thus:

- Repair and maintenance of grounds equipment.
- Construction of athletic fields.
- Moving large fields and school yards.

- Operate snow removal equipment.
- Install and maintain blacktop and cement.
- Install and maintain playground equipment and athletic equipment.
- Trim trees and shrubs.
- Install, maintain and repair fences.
- Work is performed under various weather conditions.
- Other related duties as assigned.

Similar postings for Groundswoker II include these duties and add certain work assignment duties, and mechanical duties for those positions devoted to equipment repair and maintenance. A job posting for Equipment Operator describes the duties of the position thus:

- Transport various items including furniture, food, mail, trash and supplies.
- Load and unload items from truck to designated areas.
- Perform routine maintenance on District vehicles.
- Assist in snow removal duties.
- Perform grounds crew and custodial duties as needed.
- Work is performed under various weather conditions.
- Maintain accurate records of deliveries.
- Delivery of scheduled equipment on a weekly and/or monthly basis.
- Other related duties as directed.

The classifications represented by AFSCME function as the eyes and ears of District facilities, and provide an adult presence as needed for school activities, both student and public based. The amount of contact between AFSCME represented positions and students varies widely. Some positions, such as Groundswokers, have minimal contact with students. Other positions, including Building Custodians, are directed to monitor hallways while students are present, to oversee the loading and unloading of buses, and to monitor student meals. Such assignments are, typically, left to the discretion of an individual Principal. Management of the Building Services Department has informed Principals that such assignments must be tempered by knowledge that the assignments will take from time available to perform custodial and maintenance duties.

9. The job posting for School Security Assistant, hereinafter Security Assistant, reads thus:

. . .

**GENERAL RESPONSIBILITIES:** Under the general supervision of the Coordinator for School Security with direction from the building Principal performs a variety of tasks to provide a safe, secure learning environment for students and staff.

**EXAMPLES OF DUTIES:**

1. Assists in the maintenance of order, including the utilization of crisis intervention techniques to control situations.
2. Assists in conducting investigations and cooperates with law enforcement personnel when necessary.
3. Reports and documents incidents as directed by school Principals and the Security Coordinator in and around the school building and grounds.
4. Renders First Aid as needed.
5. Intervenes in altercations between students, staff or the public, as needed, to maintain safety and security.
6. Participates in emergencies such as fire, evacuation, lockdown and tornado drills.
7. Testifies at hearings, as needed.
8. Provides guidance to students regarding support services that are available.
9. Establishes and maintains contact records, documentation of observations and a daily log of activities.
10. Provides supervision at school sponsored bus trips, athletic events, as needed.
11. Assists in controlling and identifying loiterers, trespassers and other unauthorized people.
12. Produces reports regarding school incidents as directed.
13. Assists in the enforcement of the MMSD Conduct and Discipline Code and other school regulations.
14. Coordinates efforts with the Madison Police Department Officers, Educational Resource Officers and Detective Liaison and those assigned to perform hallway supervision.
15. Compiles and summarizes monthly and year to date reports.
16. Patrols parking lots, school grounds, hallways, stairwells, doorways, rooms, storage areas and offsite locations as directed.

**REQUIRED KNOWLEDGE, SKILLS & ABILITIES:**

1. Work requires walking, running, lifting, climbing, bending, reaching and kneeling.
2. Ability to work effectively with students, staff and the community.

3. Ability to effectively quell physical and verbal altercations between students, staff or the public.
4. Strong oral communication skills.
5. Experience working cross-culturally and/or commitment to work toward improving one's own cultural competence, i.e., valuing difference/diversity, recognizing personal limitations in one's skills and expertise, and having the desire to learn in these areas.

**MINIMUM QUALIFICATIONS:**

1. Must be able to successfully pass a pre-employment physical.
2. Must be able to successfully pass a comprehensive background check and pre-employment drug test.
3. Must be able to write accurate and complete reports.
4. Possess a valid Wisconsin driver's license and the availability of properly insured vehicle.

**PREFERRED QUALIFICATIONS:**

1. Training and experience related to crisis intervention and emergency medical procedures.
2. Prior security experience.
3. Knowledge of the juvenile justice system.
4. Experience working with middle and high school age youth.

. . .

The District created the position of Security Assistant in August of 2000 on District Security Coordinator Ted Balistreri's recommendation, as communicated to the School Board by the District's management team. Prior to this, the District used a number of private contractors to provide security services. The District still uses private contractors to provide certain security services to various schools. Prior to the creation of Security Assistants, the District contracted for as many as twenty employees from private contractors. Balistreri recommended bringing the service in-house because he believed the District could improve the quality and the reliability of security services. Balistreri and the management team also supplied the recommendations that became the wages and benefits afforded Security Assistants. Balistreri researched the wages paid by the District's contractors, as well as the wages paid security staff at City of Madison, Dane County, State of Wisconsin and University of Wisconsin owned facilities. Balistreri could not find a school district in Wisconsin who employed what he took to be a comparable position.

10. The start rate for the Security Assistant position, as of the date of hearing, was \$11.33 per hour. Security Assistants, as of the date of hearing, get a \$0.50 raise after the completion of six months of employment and another \$0.75 raise after the completion of one year of employment. The District may add additional steps beyond that, but as of the date of hearing, the one-year step was the wage maximum. As of the date of hearing, the District did plan to increase the base rates of the Security Assistant position by \$0.25 per hour in the near future.

Benefits available to Security Assistants are rooted in the District's benefit plan for non-represented employees. Security Assistants earn one hour of sick leave for each twenty hours worked, accumulative to a maximum of one hundred fifty days. Security Assistants can receive paid leave, deducted from sick leave, for family illness for specified family members. Security Assistants can receive bereavement leave up to five days for "death in the immediate family" and up to two days of leave for "legal reasons such as adoption proceedings, settlement of wills, real estate closings, etc." Security Assistants are eligible to receive or receive liability, health, dental, term life, long-term care and long term disability insurance. As with other non-represented employees, the health insurance benefit includes coverage through Group Health Cooperative and WPS Alliance. The District pays the employee share of WRS participation for Security Assistants.

Security Assistants wear a shirt that identifies them as Security Assistants. The District pays for the shirt, as well as for a two-way radio and a small pack for pens, paper etc. They do not carry weapons. Security Assistants are eligible for an insurance escrow for the payment of insurance premiums upon retirement provided they have served at least ten years and have a sick leave balance. Security Assistants are eligible to enroll in tax deferred annuities provided through the District, and for reimbursement for their use of a personal vehicle for District business. Security Assistants receive ten paid holidays. Security Assistants also receive the following benefits: Flexible Spending; Medicare; Dependent Care; U.S. Savings Bonds via payroll automatic deposit; and Designated Family Partner.

Wages and benefits for the EA Unit and for the Custodial Unit are set through collective bargaining and established by contract. The agreements covering those units address at least some of the benefits provided Security Assistants, and add others. During the term of the 2000-2002 agreement range, employees from the EA Unit receive wages based on an eight step schedule, in which movement through the schedule corresponds to completion of a school year. For the 2001-2002 school year, newly hired EA Unit employees are initially placed on Step 2. Effective with the 2001-2002 school year, and after the completion of one school year at Step 8, employees become eligible for longevity payments that range from 2% through 14% depending on an individual employee's length of service. Effective with the 2001-2002 school year, the Step 2 rate for a regular EA was \$10.13; for a clerical EA was \$10.62; for an SEA was \$10.62; for a Floater SEA was \$11.13; and for an NA was \$12.35. Effective with the

2001-2002 school year, the Step 8 rate for a regular EA was \$12.53; for a clerical EA was \$13.02; for an SEA was \$13.02; for a Floater SEA was \$13.65; and for an NA was \$14.75.

Subject to plan requirements, EA Unit employees are eligible to receive or receive liability, health, dental, term life, long-term care and long term disability insurance. EA Unit employees have the option to participate in the Group Health Cooperative or WPS standard contract, but not WPS Alliance. The District pays the employee share of EA Unit employee participation in the WRS. EA Unit employees can accrue sick leave at the rate of one hour of leave for each twenty hours of work to a maximum of 1,162 hours. EA Unit employees are eligible for an annual pay out of balances exceeding 1,162 hours in accordance with the terms of the labor agreement. They may also have their accumulated sick leave paid against health insurance premiums on retirement, provided the employee meets certain requirements. The agreement covering the EA Unit grants up to five days of bereavement leave for specified relatives and one day for leave for legal reasons such as "adoption proceedings, settlement of wills, court actions, real estate closings." Employees in the EA Unit can participate in tax deferred annuities offered through the District. Employees in the EA Unit do not transport students in private vehicles for District business, but are eligible for reimbursement of travel related expenses incurred for District business. Effective with the 2001-2002 school year, employees in the EA Unit, subject to eligibility requirements, could receive eight paid holidays. EA Unit employees working the summer months could receive an additional paid holiday.

Custodial Unit employees receive wages stated in the labor agreement as a biweekly salary. The stated salaries for the 2001-2002 school year are specified in 18 ranges consisting of five salary steps. Each pay range covers specified classifications, and each step includes longevity steps that range from 3% to 13% depending on an individual employee's length of service. The lowest base rate for the 2001-2002 school year, not including any longevity payment, was Step 1 of Range Two, which states a salary corresponding to an hourly wage rate of \$13.19. The highest rate for that school year, not including longevity, was Step 5 of Range 19, which states a salary corresponding to an hourly wage rate of \$24.85.

Employees in the Custodial Unit earn sick leave at the rate of one-half day for each bi-weekly pay period to a maximum of 150 days. Custodial Unit employees are eligible for an annual pay out of balances exceeding 150 days in accordance with the terms of the labor agreement, as well as a pay out of sick leave balance for the payment of health insurance premiums on retirement provided the employee meets certain requirements. Custodial Unit employees can receive up to five days of funeral leave for certain specified relatives. Subject to plan requirements, Custodial Unit employees are eligible to receive or receive health, dental, term life and long term disability insurance. The labor agreement covering the Custodial Unit states the District will provide a partially self-funded health insurance program and a health maintenance organization option. The District pays the employee share of WRS

participation for employees in the Custodial Unit. Those employees in the Custodial Unit who are “required as a condition of employment to wear any particular kind of uniform or other special clothing” receive such items at District expense. Employees in the Custodial Unit are eligible to enroll in tax deferred annuities provided through the District, and for reimbursement for their use of a personal vehicle for District business. Employees in the Custodial Unit receive ten paid holidays, and, subject to certain restrictions, two floating holidays.

The labor agreements covering the EA Unit and the Custodial Unit address insurance for designated family partners. Security Assistants, employees in the EA Unit and employees in the Custodial Unit all receive an overtime premium for hours worked in excess of a normal schedule.

11. Ted Balistreri is the supervisor of Security Assistants. Building Principals also provide work direction and evaluation for Security Assistants. Disciplinary issues regarding Security Assistants are Balisteri’s sole responsibility.

Employees in the classification of EA, SEA, and SEA II deal regularly with teachers, who provide direction for their work activities. Supervisory authority over EAs resides in the building Principal. SEAs and SEA IIs are jointly supervised by a building Principal and, at the District level, by the District’s Special Education Coordinator. NAs are jointly supervised by the building Principal and, at the District level, by Freddi Adelson of the District’s Health Services Support Team. A School Nurse may provide work direction for NAs.

Doug Pearson is the District’s Director of Building Services. Bob Darm is the Coordinator of the Operations Division and Rick Hopke is the Coordinator of the Engineering Division. Each Coordinator reports to Pearson. Lanny Dokken is Darm’s assistant. Dokken and Darm exercise certain supervisory authority over employees in the Custodial Unit. Building Principals, and the Director of Food Services provide work direction and evaluation for employees in the Custodial Unit, but Pearson is their ultimate supervisor.

12. As of the date of hearing, the District employed twelve Security Assistants. Each of the District’s four High Schools has two Security Assistants. Four of the District’s Middle Schools have one Security Assistant. Balestreri does not rotate Security Assistants through these facilities, but expects each Security Assistant to establish productive working relationships within their assigned facility. Employees in the EA Unit work at each District school, and spend the majority of their work time in the classroom. Employees in the Custodial Unit work on the grounds of all District facilities. They work at each District owned facility, including each of its schools. Employees in the EA Unit take breaks in a break room or other rooms within the building facility, and do not leave the building except during their lunch hour. District schools have a custodial office, at which custodians typically take their breaks and lunch periods. Custodians do not leave their assigned building unless they are on a



shift including a thirty minute unpaid lunch. Security Assistants are expected to take their breaks, including lunch, within their school building. Each Middle and High School currently staffed with a Security Assistant has an office for their use. In two of those schools, the Security Assistant shares office space with other staff.

13. The District schedules each Security Assistant to work forty hours per week. Balistreri determines the hours worked within that schedule in consultation with the building Principal. The eight hour day worked by an individual Security Assistant starts between 7:30 a.m. and 9:00 a.m. Employees in the EA Unit work weekly schedules varying from three hours through forty hours. The work day, work week, and work year of employees in the EA Unit track the instructional calendar. Employees in the Custodial Unit work either twenty or forty hours per week. Daily schedules of employees in the Custodial Unit vary between the hours of 5:00 a.m. and 12:00 p.m. Employees in the Custodial Unit work throughout the calendar year. On scheduled In-service Days or teacher convention days, employees in the EA Unit are permitted to choose between (1) taking a day off without pay; (2) participating in training; or (3) working their regular duties if given permission to do so. On such days, Security Assistants either work or participate in training. Employees in the Custodial Unit are not affected by such days.

The District staffs its High Schools with employees from the Custodial Unit in the classification of Building Custodian II, Maintenance Worker, and Custodial Worker I, II and III. These classifications staff those buildings from roughly 6:00 a.m. through 11:00 p.m. Employees from the Custodial Unit will open the school buildings prior to the start of the school day, then close and secure the buildings at the end of the school day, including any public functions following the close of the school day. The District staffs its Middle Schools with employees from the Custodial Unit in the classification of Building Custodian II, and Custodial Worker I, II and III. These classifications staff those buildings from roughly 5:00 a.m. through 10:00 p.m., performing similar work to that at the High Schools. With the close of the school year, the work performed by members of the Custodial Unit will change from ongoing maintenance work to major repair, cleaning and renovation projects. Typically, summer work is performed on the first shift, from roughly 7:00 a.m. until 2:30 p.m.

14. Security is a shared responsibility among District employees. Any District employee is expected to report unruly student conduct, suspicious persons, or violations of District security policies. Individual responsibility to respond directly varies among positions. Custodial Unit employees have been informed to report such matters, but not to create a confrontation. Individual EA Unit employees directly respond to unruly conduct from individual students within their care. Individual Security Assistants directly respond to unruly behavior of any student or person in areas monitored by a Security Assistant.

The District gives at least one week of training to newly hired Security Assistants. Balistreri supplements that training when possible, particularly during non-student contact days scheduled in the school calendar. Such training totals perhaps forty hours per school year. Security Assistants receive training in fire evacuation, crisis intervention, emergency first aid, CPR and search and seizure procedures. Training in at least some of these areas is also provided to other groups of District employees. Security related training reflects the shared, but distinguishable security responsibility of individual employees. For example, Security Assistants and employees in the EA Unit, unlike employees in the Custodial Unit, may receive training in restraint of students. Employees in each group receive training in the District's use of force policy.

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

### **CONCLUSIONS OF LAW**

1. The position of Security Assistant is appropriately included in either the Madison Teachers, Inc. bargaining unit set forth in Finding of Fact 5 or in the Wisconsin Council 40 bargaining unit set forth in Finding of Fact 6.

2. The position of Security Assistant is most appropriately included in the Madison Teachers, Inc. bargaining unit set forth in Finding of Fact 5.

3. The Security Assistants are appropriately included without a vote in the Madison Teachers, Inc. bargaining unit set forth in Finding of Fact 5.

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 position of Security Assistant is hereby included in the Madison Teachers, Inc. bargaining unit set forth in Finding of Fact 5.

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**MADISON METROPOLITAN SCHOOL DISTRICT**

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

**THE PARTIES' POSITIONS**

**MTI's Initial Brief**

After an overview of the record, MTI notes that the Commission has long articulated a seven-standard test for evaluating unit placement issues. MTI contends that the Security Assistants "share a clear community of interest with the other educational assistants." The number of Security Assistants is too small to pose a question concerning the majority status of MTI in the EA Unit, thus favoring accretion. The small number of Security Assistants also argues against the creation of a separate unit, since that "would be antithetical to the Legislative charge that the WERC create the fewest possible number of bargaining unit(s) for any specific employer".

Duties and skills of Security Assistants are comparable to employees within the EA Unit but markedly different from those in the Custodial Unit. A comparison of EA Unit position descriptions and job postings establishes that incumbents perform student oriented educational functions, including maintenance of order and conflict resolution. Job postings for Security Assistants "are very similar." The contrast with the Custodial Unit is a marked contrast. Student contact is minimal, and duties focus on "cleaning, repairing and maintaining the physical plant of the District." Witness testimony underscores this. MTI concludes "the contrast between this minimal contact with students by custodians and others in the (AFSCME) bargaining unit and the primary contact between students and the EAs represented by MTI and students and the Security Assistants is palpable."

Application of the third standard is complicated by the fact that the District has unilaterally established the wages, hours and conditions of employment for Security Assistants. Examination of the evidence establishes, however, that the days worked by Security Assistants are more akin to those of the EA Unit than the Custodial Unit. Like the EA Unit, Security Assistants work a calendar that tracks the school-year calendar. The Custodial Unit's calendar "is more akin to a traditional business calendar than to that of a school district." Security Assistants currently work a forty hour week. Hours vary widely in the EA Unit and in the Custodial Unit, but it is evident that EA Unit hours track the student day, as do the hours of Security Assistants. Unlike the Custodial Unit, the EA Unit does not include positions working a second or third shift. Security Assistants, like EAs, work the day shift. Similarly, Security Assistants take breaks, including lunch, within school buildings at times dictated by the student day. District student-restraint type training is common to Security Assistants and EAs. Custodial Unit members do not participate in such training.

EA Unit employees are jointly supervised by a building Principal and a supervisor in the District's Doyle Administration Building. This tracks the chain of command for Security Assistants. In the Custodial Unit, while a building Principal has day-to-day supervisory authority over Custodial Unit employees, the off-site chain of command is located in the "District's Building Services Facility . . . approximately seven miles from the Doyle Administration Building." AFSCME members "share a relatively tight bond with respect to their own supervision, but that supervision has no overlap with the Security Assistants."

Like EAs, Security Assistants "work in schools when students are present." This is not true for Custodial Unit members, whose duties may take them outside of the schools in which the Security Assistants and EAs spend their work hours.

Accreting the Security Assistants to either the EA Unit or to the Custodial Unit will not result in undue fragmentation. However, to make a separate unit for the Security Assistants "would certainly run afoul" of the statutory proscription.

The Security Assistants have no history of bargaining with the District. However, the District and MTI "have a long history of negotiations with respect to the wages, hours and conditions of employment of the other assistants employed by the District and represented by MTI." That history "would inure to the benefit not only of the Security Assistants . . . but also to . . . the District." The shared educational mission between the Security Assistants and the EA Unit provides a "valuable and economical" head start to District bargaining with MTI over the Security Assistants. The common bond between MTI and the District on student/employee safety issues underscores that. AFSCME has no comparable relationship with the District.

### **AFSCME'S Initial Brief**

AFSCME contends that the unit description of the EA Unit precludes the accretion of the Security Assistants, since the classification is not specifically noted, and thus falls within the exclusion of "all other employees." The AFSCME agreement permits the accretion, since it allows for "employees engaged in custodial, maintenance and related duties."

A review of the position description for the Security Assistant position establishes considerable overlap with duties performed by classifications within the Custodial Unit. Use of custodians as "an 'adult presence' at school activities" and for "routine security responsibilities" is "routine" in the District. Duties performed by Security Assistants on a regular basis are otherwise performed by AFSCME represented employees at schools and during hours "when there are no SA's on duty." That Security Assistant and custodial/maintenance employee duties are not identical cannot obscure that "(b)uilding security continues as a distinguishing characteristic, a core function, of the position."

Extending a vote to the Security Assistants would be ill-advised in light of CITY OF CUDAHY, DEC. NO. 21887-B (WERC, 1/90). Since there are few employees involved, the possibility of employees voting to “’strand’ themselves and accordingly fragment themselves from an appropriate bargaining unit.” Beyond this, Commission case law makes employee preferences irrelevant to a unit clarification proceeding.

A review of the record establishes that the Security Assistants should be accreted to the AFSCME bargaining unit.

### **The District’s Initial Brief**

After a detailed review of the record, the District contends that Commission case law, including CRAWFORD COUNTY, DEC. NO. 17109-D (WERC, 8/01) demands that the Commission initially determine whether contract language resolves the issue. Unlike the current positions within the EA Unit, the Security Assistants “do not directly or indirectly assist professional staff in the instructional program” and thus it follows that “they are not covered by the EA recognition clause.” Nor are they covered by the Custodial Unit description, since the Security Assistants “are not engaged in custodial, maintenance or related duties.”

Thus, the analysis turns to the Commission’s seven standard test. An application of those tests will not support a conclusion that Security Assistants share a community of interest with employees represented in the EA or the Custodial Units. A detailed examination of the positions represented by MTI establishes that they “primarily assist students with learning.” The duties vary widely from assisting teachers to actual tutoring. A detailed examination of the duties of the custodial/maintenance employees represented by AFSCME establishes that they “are often the ‘eyes and ears’ of a building.” They perform general cleaning and maintenance functions, provide “a ready adult presence in the halls and on the premises of a school building,” and perform a range of security functions.

In contrast to either, Security Assistants “perform a variety of tasks related only to providing a safe and secure learning environment for students and staff.” A Security Assistant does interact with students, but shares a close and regular relationship with a building Principal. Unlike other employees, they work primarily in hallways or other common areas within a school. They wear a uniform to set them apart, and carry two-way radios. Their security function predominates, and unlike other employees, that function is expected to cover “any type of altercation.” Their security training is necessarily more elaborate than other employees’. Their responsibility to assist law enforcement, to report employee misconduct and to assist into investigations of any misconduct is unparalleled.

Nor will an examination of the wages, hours and working conditions of employees in the MTI or AFSCME represented units establish a significant relationship to those governing Security Assistants. EAs work a wide variety of hours over a school year and earn an hourly wage. Custodial/Maintenance employees are paid a biweekly salary, work a narrower range of hours and spread that work over a calendar year. Security Assistants work roughly a ten-month year, without longevity pay, and are not covered by an elaborate wage schedule. EAs and custodial/maintenance employees enjoy a variety of contractually set benefits, but the benefit package of Security Assistants tracks “the same package as non-represented District employees receive.”

With two exceptions, EAs are supervised solely by a building Principal. An SEA II is supervised solely by special education staff. Custodial/maintenance employees are supervised primarily from Building Services. Unlike either represented unit, Security Assistants report directly to an off-site supervisor. A building Principal will provide some day-to-day supervision and direction.

“EA unit members work at all District schools”, primarily in classrooms. With the exception of a lunch break, EA Unit members stay in the school building. Custodial Unit employees work at all District facilities and grounds. Unlike EA Unit members, their work year and workday do not track the school calendar. Security Assistants work only at “middle and high schools.” Their work year tracks the student school year. They work and take breaks alone. Their on the job interaction is closest with a building Principal. Thus, the Security Assistants do share a common work site with represented employees.

Although the statute directs the Commission “to avoid fragmentation of units whenever possible” a separate Security Assistant unit will not fragment District units. The unique interests and aspirations of Security Assistants “will be subordinated by either the EA Unit, numbering almost 700 employees, or the Custodial Unit, numbering almost 250 employees.” The District has two other units similar in size to that which would include Security Assistants. These considerations warrant the Commission’s affording the Security Assistants a vote in their representation, if any.

Prior to the creation of the Security Assistant position, the District used independent contractors for the security function. Thus, there is no bargaining history relevant to the Commission's seven standards. That the two other units already have elaborate labor agreements underscores the risk of subsuming the interests of the Security Assistants.

The District’s sole interest “in this case is that the representative process – conducting a vote – be engaged in.” The Commission should allow the Security Assistants to vote “to be represented at all; to be represented through the establishment of a separate unit; to be represented by MTI; or to be represented by AFSCME.” Application of the Commission’s case law and the statute establish that accretion without a vote is inappropriate.

### **MTI's Reply Brief**

MTI contends the District's brief is longer on factual recitation than on analysis of fact. The District's and AFSCME's assertion that the MTI-EA recognition clause precludes accretion is without merit. The Security Assistants did not exist when the Commission certified the unit and the unit's description is broad enough to encompass the newly created position. AFSCME's assertion that its recognition clause is sufficiently broad to incorporate the Security Assistants ignores that there is minimal relationship between the classifications represented by AFSCME and the Security Assistants.

The District's conclusion that Security Assistant duties do not track those of EAs rests on the factual statement that they do not directly or indirectly assist teachers. This statement, however, ignores that the mere listing of duties falls short of analyzing "whether the duties of the Security Assistants are related to the instruction of students." Nor can the District's recitation of the differences between the wages, hours and working conditions of Security Assistants and represented employees be considered analysis. These differences reflect no more than unilateral District action.

The District's argument concerning fragmentation "appears overly concerned about the interests of the Security Assistants". This reflects the "District is too concerned by half." If the Security Assistants are isolated in a tiny unit, they lose the meaningful bargaining power possible through accretion. "The District obviously would rather not have MTI represent the Security Assistants so as to be able to continue to suppress their wages and benefits as the District has done unilaterally."

The MTI concludes that accretion into the EA Unit is the most appropriate result. Accretion into the Custodial Unit is inappropriate, and the creation of a separate unit conflicts with the Commission's "statutory mandate to keep as few units as possible while still protecting the rights of the affected employees."

### **AFSCME'S Reply Brief**

The scope of the recognition clause standing alone warrants accretion of the Security Assistants to the Custodial Unit. Even if the recognition clause fails to determine the issue, the Commission's seven standard test warrants the accretion. The District and MTI "have unfairly minimized the significance of" the close relationship between the security function performed by Security Assistants, as private or as public employees, and the function performed by Custodial Unit employees.



The security function performed by Security Assistants does not extend to personnel matters, and thus does not pose any issue that separates their interests from those of Custodial Unit employees. Fragmentation arguments raised by the District afford little guidance. The small number of employees does not raise any “employee free choice concerns.” The Security Assistants account for a percentage of the Custodial Unit that, under prior Commission cases, should not pose such concerns. Beyond this, MTI and AFSCME promptly filed unit clarification petitions after the creation of the Security Assistant position, and there is no pending formal request for election.

Nor does the District afford persuasive guidance regarding the assessment of differences in the wages, hours and working conditions of Security Assistants and represented employees. At best, the District highlights the effect of its own unilateral action in setting terms and conditions of employment. The vote sought by the District is similar to that statutorily granted professional or craft employees. This ignores, however, the absence of a statutory mandate for the vote the District seeks.

The Commission’s standards establish that “(c)ustodians and SAs have more in common than not . . . (including) related duties and . . . a related purpose.” Similarly, they share the supervision of the building Principal. On balance, the District provides no reason to afford this group of employees a specific choice, unless the Commission is prepared to abandon the diversity of “wall to wall” units. MTI arguments denigrate the work of custodians and obscure the overlap in duties between custodial employees and Security Assistants.

The District’s position on an election “was and still is confusing.” AFSCME interpreted the District’s position at and after the close of hearing to be that it did not seek a separate unit of Security Assistants. Its brief contradicts that position, but in either event, an election is inappropriate. It is unpersuasive to compare the size of craft and non-craft units, and neither Commission case law nor the statute could warrant creating a separate unit of Security Assistants. The recognition clause of the Custodial Unit, the Commission’s seven standard test, and the statutory anti-fragmentation policy all point to accreting the Security Assistants into the Custodial Unit.

### **The District’s Reply Brief**

The “sheer size of the District” creates the possibility of affording a unit to the Security Assistants without running afoul of the anti-fragmentation policy. Beyond this, Commission case law supports the result.

MTI arguments regarding student contact miss the mark. MTI ignores the amount of student contact custodial employees have, and misses the analytically important point: “it is not the amount of contact that employees have with students; it is the nature of the contact” that is relevant to unit determination issues. Security Assistants, unlike EAs, do not play a teacher-supportive role. “Somewhat similar” to some Custodial Unit employees, the duties of a Security Assistant “focus on the security of the building in general; and the staff, students, and the public.” Like custodians, and unlike EAs, they work primarily in hallways and not classrooms. Like custodians, and unlike EAs, they take lunch breaks in their own office.

Nor does the supervision of Security Assistants manifest a clear basis to accrete the position to the EA Unit. All “of the employees assigned to a school building must take direction from the principal.” Principals evaluate the work performance of EAs. Neither Security Assistants nor custodial employees work with teachers, and both respond to off-site chains of command. MTI characterization of a long history of District/MTI discussion of safety issues “takes great liberties with the record.” That characterization affords less guidance than demonstration of a need for further hearing if the point is considered relevant.

The CUDAHY case cited by AFSCME in fact establishes that “employee choice may indeed outweigh the anti-fragmentation proscription.” Since there is no unit description encompassing the Security Assistant position, and since there is no compelling community of interest link between the Security Assistant position and the positions in either the EA or the Custodial Unit, CUDAHY does not dictate an accretion. A detailed review of the record establishes that both units can claim superficial similarity between the positions they represent and the Security Assistants. Neither, however, has demonstrated a compelling community of interest that warrants an accretion rather than an election.

### **DISCUSSION**

In this case, MTI and AFSCME petitioned the Commission to clarify which of two existing bargaining units should include the newly created position of Security Assistant. The District argues that the Security Assistants should be in a separate unit or should be afforded a vote as to whether they wish to be accreted to either unit.

Because we do not have an election petition before us, the question of whether a separate unit of Security Assistants should potentially be created will be resolved as part of our analysis of whether clarification of the Assistants into an existing unit is appropriate. If we conclude that clarification into an existing unit is not appropriate, we will dismiss the instant petitions and await an election petition. If we conclude that clarification is appropriate, then we will address the question of whether the Assistants should be automatically included in the unit most appropriate for their inclusion or should be given a vote as to whether they wish to be so included.

We begin our analysis of the unit clarification issue with the question of whether either of the existing bargaining unit descriptions covers the Assistants.

The parties dispute the application of CRAWFORD COUNTY, DEC. NO. 17109-D (WERC, 8/01), to this proceeding. More specifically, the parties disagree as to the impact in this case of the following sentence from that decision: “In making this determination, we first consider the contractual language used to describe the scope of the existing bargaining units to see if the language resolves the dispute”

After considering the parties’ positions, we conclude that the two unit descriptions are inconclusive regarding the unit placement of Security Assistants. As the District points out, neither description clearly addresses the position, and can be read to exclude it. However, both descriptions employ language sufficiently broad to include the position. The Custodial Unit description includes “all regular full-time . . . employees engaged in custodial, maintenance and related duties.” The EA Unit description includes “all regular full-time . . . educational assistants . . . directly or indirectly assisting professional staff in the instructional program.” The school security function performed by Security Assistants is neither custodial nor maintenance based, but is “related” to the security function performed by those Custodial Unit employees who open, close and monitor District schools and activities. Similarly, the Security Assistants do not perform the direct teacher assistance function performed by employees classified as EA, SEA or SEA II. Their role is, however, “indirectly” supportive of this function, arguably more akin to that of an NA.

Because the unit descriptions are inconclusive, we analyze the factors we have historically considered when deciding whether or which unit is appropriate for a position. In CITY OF REEDSBURG, DEC. NO. 16511-C (WERC, 10/94) at 9-10, we stated the factors thus:

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 employees in the unit sought as compared to wages, hours and working conditions of other employees;
4. Whether the employees in the unit sought have separate or common supervision with other employees;

5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees;
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 employees 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, see *ARROWHEAD UNITED TEACHERS V. WERC*, 116 Wis.2d 580, 592 (1984).

Within the unique factual context of each case, not all criteria deserve the same weight, see *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). Thus, a single criterion or a combination of criteria listed above may be determinative.

Applying these factors to the facts, we conclude that the position of Security Assistant is most appropriately included in the EA Unit.

Factor 1 can be viewed in a number of ways, but points toward inclusion in the EA Unit. As noted above, school security is a function common to all District employees. The degree of specialization in the Security Assistants is singular, but not without parallel with employees in the AFSCME and MTI represented units. For example, AFSCME and MTI represented employees assist in monitoring hallways, bus (un)loading, lunch room and other school activities. All District employees are trained, in varying degrees, to diffuse conflict. All District employees share a common duty to report observed violations of District policy. Employees in the EA Unit tend to focus on specific students, while Security Assistants focus on students generally. Ultimately, however, the Security Assistants perform a student contact based service. This makes their purpose more akin to the EA than to the Custodial Unit. Security Assistants are expected to be an adult presence in the schools, and to cultivate effective relationships with students, teachers and the building Principal as a core function of their position. Certain AFSCME represented positions share this focus, but not as a core function of their duties. AFSCME points out that the security function is facility based, as with the employees it represents. This point has merit, but understates the amount and significance of student contact for the Security Assistant position. Student discipline is inextricably intertwined in the educational process. That process is student contact based.

As to Factor 2, a review of job description documents leads us to conclude that the Security Assistants specialize in performing a security function that supports the teaching function. The support is indirect, but demands regular and ongoing student contact. That much of this contact is prompted by actual or potential behavioral problems manifests the parallels with the job description documents for the EA Unit. The desirability of first aid, CPR and crisis intervention skills underscores this conclusion, and its “hands on” relationship to student contact. The overall skills demanded of a Security Assistant are more relationship-based than are those demanded of employees in the Custodial Unit.

As to Factor 3, the hours of the Security Assistants are tied to the school calendar, in a fashion more closely related to the EA Unit than to the Custodial Unit. Wage and benefit comparisons are of limited use, since the District unilaterally established those for the Security Assistants. The benefits listed in the Findings of Fact are not exhaustive regarding the benefits afforded represented employees, but does show parallels between those provided Security Assistants and those provided AFSCME and MTI represented employees.

Factor 4 does not clearly favor either petitioner’s claim to the disputed position. All District employees who serve an individual school share a supervisory relationship with the building Principal. As with employees in the Custodial Unit, the focus of supervisory authority for the Security Assistants is located outside the individual school. Balistreri, like Pearson, plays a strong and direct role in the supervision of his employee complement. However, like employees in the EA Unit, Security Assistants are expected to interact closely with the building Principal. Certain EA Unit employees, like Security Assistants, have strong off-site supervision located at the District’s Doyle Administration Building. Pearson’s office is not in that facility, but this fact is of limited significance. The parallels in supervision may not clearly favor one petitioner over the other, but undercut the District’s assertion of the uniqueness of the Security Assistant position.

Factor 5 does not clearly favor either petitioner’s claim to the disputed position. AFSCME and MTI represented employees work in the same schools as do the Security Assistants. Like Custodians, Security Assistants use an office for many of their breaks. This limits contact between Security Assistants and their fellow employees, whether represented by AFSCME or MTI. Many duties of the Security Assistants place them in hallways and other common areas. This is similar to certain AFSCME represented employees. The significance of this point is limited by the lack of direct contact between them. Unlike Security Assistants, employees in the EA Unit spend their time in the classroom, or other learning areas.

Factor 6 reflects the statutory directive found in Sec. 111.70(4)(d)2.a., Stats., that:

The Commission shall determine the appropriate collective bargaining unit for the purposes of collective bargaining and **shall whenever possible, unless otherwise required by this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force.** (emphasis added).

This “subchapter” requires that craft employees be given the right to determine whether they wish to have their own unit. No such right is given to Security Assistants. Thus, the existence of small craft units of District employees does not provide a persuasive basis for arguing for the existence of a small Security Assistants unit.

Placement of the Security Assistants in either the AFSCME or MTI represented unit is more consistent with Factor 6 than is the District’s position that a new unit be created. While the District has a large work force, the statute nonetheless directs us to maintain “as few units as practicable. . .” Where, as here, there are existing units within which the employees at issue can appropriately be placed by virtue of a consideration of Factors 1-5, Factor 6 points strongly toward rejection of a separate unit for Security Assistants.

Factor 7 plays no role in this dispute. The Security Assistants are new positions.

Given all of the foregoing, we are satisfied that there is no persuasive basis for concluding that creation of a separate bargaining unit of Security Assistants is warranted. District assertions that the interests of the Security Assistants will be inappropriately subsumed in a larger unit are speculative and an analysis of Factors 1-5 indicates that Security Assistants could appropriately be included in either the AFSCME or MTI unit.

As to the question of which unit should include the Security Assistants, we are persuaded that the shared purpose, student contact based skills, calendar and hours make inclusion in the MTI EA unit the most appropriate.

There remains the issue of whether, as argued by the District, the Security Assistants should be allowed to vote on whether they wish to be included in the MTI EA unit. As a general matter, where, as here, the addition of a small number of employees into a large bargaining unit does not call into question the continuing majority status of the existing collective bargaining representative, we order the clarification of the employees into the existing unit without a vote. DANE COUNTY, DEC. NO. 15696-A (WERC, 12/88); PORTAGE

COUNTY, DEC. NO. 18792 (WERC, 6/81); DODGE COUNTY, DEC. NO. 8733-B (WERC, 7/79). We have not been presented with any persuasive basis for departing from this general practice and thus we have ordered the clarification of the Security Assistants into the MTI EA unit without a vote.

Dated at Madison, Wisconsin this 25th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

