

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KENOSHA VOCATIONAL, TECHNICAL AND  
ADULT EDUCATION DISTRICT NO. 6 (GATEWAY  
TECHNICAL INSTITUTE)

Case VI  
No. 18678 ME-1144  
Decision No. 14381

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Thomas Kennedy, appearing on behalf of the Petitioner.  
Mulcahy & Wherry, Attorneys at Law, by Mr. John T. Coughlin, appearing on behalf of the Municipal Employer.  
Mr. Wayne Schwartzman, Staff Counsel, WEAC, appearing on behalf of the Intervenor.

Gateway Federation of Teachers, Local 1924, hereinafter referred to as the Petitioner, having on December 20, 1974 filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of Kenosha Vocational, Technical and Adult Education District No. 6, to determine whether said employees desire to be represented by said Petitioner for the purposes of collective bargaining; and a hearing on such petition having been held at Kenosha, Wisconsin, on April 2, 3, 25, and at Racine, Wisconsin on May 13, 1975, Sherwood Malamud, Hearing Officer, being present; and during the course of the hearing Kenosha Technical Education Association having been permitted to intervene in the matter on the basis that it presently is the certified collective bargaining representative of said employees; and the Commission having considered the evidence and the briefs of counsel filed by September 15, 1975 and being fully advised in the premises, and being satisfied that a question has arisen concerning representation of certain employees of said Municipal Employer;

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all full-time and regular part-time instructional personnel, including teachers, counselors, librarians, program chairmen, developers, Opportunity Center teachers, certified teaching assistants, and aviation teaching assistants, but excluding the ABE teachers and the ABE Counselor, the Recruiters, the Women's Bureau Counselors, the Consumer Consultant, Community Services Division instructional personnel, supervisory managerial and confidential employees, custodial employees and clerical employees, and all other employees who were employed by Kenosha Vocational, Technical & Adult Education District No. 6 on March 1, 1976, except such

employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employees desire to be represented by Gateway Federation of Teachers, Local 1924, or by Kenosha Technical Education Association, or by neither of said organizations, for the purposes of collective bargaining with Kenosha Vocational, Technical & Adult Education District No. 6.

Given under our hands and seal at the  
City of Madison, Wisconsin this 1st  
day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

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Morris Slavney, Chairman

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*Howard S. Bellman*

Howard S. Bellman, Commissioner

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*Herman Torosian*

Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

BACKGROUND

In April, 1972, the Commission certified 1/ the Intervenor, Kenosha Technical Education Association, as the collective bargaining representative in a collective bargaining unit consisting of:

" . . . all instructional personnel, including teachers, certified teaching assistants, counselors, librarians, program chairmen and federal project teachers who teach at least 50% of a teaching load, excluding supervisory, managerial, confidential, custodial and clerical employees."

The Petitioner, Gateway Federation of Teachers, Local 1924, in its petition, described the unit sought as:

"Counselors, librarians, Instructional Materials Developer, and certified teaching assistants, who work at least fifty per cent (50%) of a full-time load - All instructional personnel who teach at least fifty per cent (50) of a full-time teaching load, including teachers, program chairmen, and federal project teachers who have a reasonable expectancy of employment for at least thirty (30) weeks. but excluding temporary, supervisory, managerial, confidential, custodial and clerical employees."

At the commencement of the hearing, Petitioner amended its description of the unit to read as follows:

"All full-time and regular part-time instructional personnel, including teachers, counselors, librarians, recruiters, program chairmen, developers, project assistants, aviation teacher assistants, opportunity center teachers, but excluding supervisors, managerial employees, confidential employees, custodial employees and clerical employees."

Intervenor concurred with Petitioner's amended description. However, the Employer, Gateway Technical Institute, disputes the inclusion of a number of positions in this unit.

The Employer is a public educational institution accredited by the Wisconsin Board of Vocational, Technical and Adult Education (VTAE) and established under the laws of the State of Wisconsin. It is the Employer's purpose to provide the communities it serves, namely Racine, Kenosha and Walworth Counties with educational programs to prepare its students for employment. The Employer services its communities through three campuses located in the cities of Racine, Kenosha and Elkhorn with additional centers in Burlington, East Troy and Delavan, Wisconsin. It grants degrees in 27 two-year programs and diplomas in 26 one- and multiple-year programs, and it also provides many non-credit courses and programs to the general community, along with programs for illiterate adults and courses for adults seeking general equivalency high school diplomas. It maintains career and vocational testing and counselling programs and staff, as well as, facilities for individuals with learning disabilities.

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1/ Board of Vocational, Technical & Adult Education, District No. 6  
(10810) 4/72.

The Employer delivers these programs through, and is structured into, five divisions: Instructional Services, Student Services, Community Services, Research and Planning and Administrative Services. Only professional employees employed in the Instructional, Community and Student Services Divisions are subject to inclusion in the unit as described in the amended petition.

There are approximately 2,000 students enrolled in degree and diploma programs in the Instructional Services Division. These students are taught by a faculty of approximately 160 teachers. The faculty of the Instructional Services Division comprises the bulk of the unit described in the Petitioner's amended description. In the Instructional Services Division, the Employer seeks to exclude from, and the Petitioner and Intervenor seek to include in the unit the Aviation Teaching Assistants and the Opportunity Center teachers.

The Community Services Division, with an enrollment of 38,000 students and 800 faculty, provides programs for illiterate and semi-literate adults, which enable them to obtain general equivalency diplomas (high school) and other basic skills in the English, reading, typing, etc. It also provides a wide array of non-credit courses programmed for broad segments of the community-at-large. Petitioner and Intervenor have excluded from the scope of the amended unit most of the faculty employed in the Community Services Division, who teach "evening classes" on a part-time basis. However, Petitioner and Intervenor seek to include in, and the Employer seeks to exclude from the unit, the following positions located within the Community Services Division: the Adult Basic Education (ABE) teachers; the ABE Counselor; the Women's Bureau Counselor; the Consumer Consultant, and the Recruiters, who work primarily in and with the minority communities.

The Student Services Division provides testing facilities and counselling staff to students, primarily those students enrolled in the Instructional Services Division's degreed and diploma programs. However, some of these facilities are available to the public-at-large, as well. The Employer disputes the inclusion of several Counselors on the grounds that they are not professional, and that they do not share a community of interest with other employees included in the amended petition. The Employer seeks to exclude, and Petitioner and Intervenor seek to include, the following positions located in the Student Services Division: Clinical Technician; the Work Evaluation Center Counselors; the Union Grove Inmate Counselors; the Veterans Counselors, and the High School Recruiter.

#### POSITION OF THE PARTIES

In light of the large number of positions at issue, the Commission presents the core of the parties' arguments which recur again and again in their argument in support of their positions relative to the scope of the unit issue.

##### The Employer:

Generally, the Employer seeks to exclude the disputed positions principally, on four grounds. First, the Employer asserts that the present incumbents in the above positions are not certified nor, for the most part, are they certifiable positions, and hence said incumbents are not professional employees as that term is defined by MEPA.

Secondly, the Employer asserts that the programs in which the disputed positions are found are federally funded. Because the source of the funds for these programs is the federal government and not local community taxes, those employed in the programs are not assured continued employment.

Thirdly, as a result of the uncertainty of the federal funding, the Employer non-renewed these employees, and consequently, they have no expectation of employment for the 1975-1976 school year.

Finally, the Employer argues that the employees, which it seeks to exclude, do not share a community of interest with those professional employees included in the unit.

Petitioner and Intervenor:

Although the arguments of Petitioner and Intervenor are stated differently, they agree on all issues presented in this matter, and accordingly, the Commission has consolidated their arguments.

Petitioner and Intervenor maintain that the individuals serving in the disputed positions are professionals. Furthermore, Petitioner and Intervenor assert that the unit described in the amended petition is intended as a "wall-to-wall" unit of professional employees. They argue that the Commission is mandated by MERA to avoid fragmenting units. They cite Cochrane-Fountain City 2/ for the proposition that the Commission will co-mingle professionals to achieve this statutory mandate. Finally, the Petitioner and Intervenor maintain that there is a sufficient community of interest among the disputed positions and those in the unit to sustain the inclusion of the disputed positions in the unit. This is so because the disputed positions are "supportive of the educational program". Blackhawk Technical Institute (11726-A) 7/73.

Petitioner and Intervenor assert that the Employer's arguments relative to source of funding and the uncertainty of that funding, has been consistently rejected by the Commission as a basis for excluding positions from a bargaining unit, Superior Vocational School System (7479) 2/66; Blackhawk Technical Institute (11726-A) 7/73; Palmyra Joint School District No. 1 (13730) 6/75. Furthermore, they assert that the non-renewal of the incumbents should have no bearing on the unit question at issue herein. They note that the Employer, in that regard, is confusing issues of unit scope with those of voter eligibility. If the employees in question are no longer employed by the Employer on the eligibility cut-off date then naturally, they will not be permitted to vote.

ANALYSIS

The Commission will first determine the professional status of the individuals serving in the disputed positions. The Commission will then determine which professionals should be included in the unit found to be appropriate.

In its analysis of these issues, the Commission considered the arguments of the parties and has employed the following principles in its determination of the two major issues in the case, i.e., that of professional status and community of interest.

Professional Status:

The Commission is mandated by Section 111.70(1)(1) to employ the following criteria in its determination of professional status:

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2/ Decision No. 13700, 6/75.

"(1) 'Professional employe' means:

1. Any employe 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;
  - 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; or
2. Any employe who:
  - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d;
  - b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1."

The Employer argues that State certification of a teacher is a necessary condition for a determination of professional status. However, the Commission has followed the statutory criteria established in MERA in its determination of professional status. It has not determined professional status solely on the basis of State certification and licensing. Most recently, the Commission found that a non-degreed, non-certified Counselor-Project Occupational Exploration/Career Choice was a professional employe on the grounds that this counselor provided "the same quality of professional counselling services to the prison population as is afforded to the regular student population." 3/ In fact in District #9, Area Board of Vocational, Technical & Adult Education (11267) 9/72 the Commission directed an election in what the Commission described as a unit comprised of non-certified professional employes. Therefore, the Commission rejects the Employer's certification argument and in doing so the Commission notes that it will look beyond the individual certification status of an individual to MERA's explicit criteria in determining professional status.

Finally, the unit described in the amended petition is a professional unit. Accordingly, the Commission may not co-mingle non-professionals in this unit under Section 111.70(4)(d)2a which states:

". . . The commission shall not decide, however that any unit is appropriate if the unit includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit."

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3/ Blackhawk Vocational, Technical & Adult Education District No. 5 (13460-A) 9/75.

No request for the kind of vote described in Section 111.70(4)(d) 2a has been requested by any party to this proceeding. Consequently, non-professionals have been excluded from the unit.

#### Community of Interest - Federal Funding

In addition to its arguments relative to professional status, the Employer raises several arguments with respect to source of funding and the incumbents assurance of continued employment as a basis for excluding the disputed positions from the unit. Rather than repeating the rationale for rejecting the Employer's argument in each and every instance where it was raised (and it was raised in its argument concerning most of the disputed positions), the Commission will dispose of them here.

The Employer asserts that the source of funding for most of the positions in dispute, i.e., the Work Evaluation Center, the Women's Bureau Counselors, Minorities Recruiters, etc. is the federal government. Therefore, the prospect for continued employment for the 1975-1976 school year is directly related to the ebb and flow of federal funds. In fact, here, the Employer has non-renewed all the incumbents in these federally funded positions. The Employer notes further that the incumbents of several positions in dispute, for example, the Union Grove Inmate and CETA Counselor, David Merscher, receives neither a contract nor a letter of employment. The Employer argues that the lack of assurance of continued employment and in some cases the casual nature of the employees' tenure with the Employer preclude the inclusion of such employees in the unit.

The Commission has often stated that it will not determine voter eligibility on the basis of the source of funds utilized to pay an employee's salary. 4/ The facts in this case provide substantial support for this well-established policy. For example, the Veterans Counselor and the Consumer Consultant have been employed for three to four years. Each year they were each non-renewed in the spring and rehired for the following fall semester. It is apparent that if the Employer's argument were adopted, employees with substantial seniority would be excluded from the unit. It is clear that such result is not contemplated by MERA.

Finally, in Blackhawk Vocational, Technical & Adult Education District No. 5, supra, the Commission considered the eligibility of federally funded teachers who received a letter of employment who were hired on a week-to-week basis at an hourly rate of pay, and the Commission placed these individuals in the professional unit. The Commission finds that the facts underlying the Employer's argument in Blackhawk are identical to those underlying the Employer's argument here, and in Blackhawk the Commission stated that:

"... the Municipal Employer's assertion that the federally funded teachers be excluded from the collective bargaining unit, rests upon the source of funding rather than upon the duties of the positions. The Commission has held that employees will not be excluded from a collective bargaining unit solely on the basis of the federal or state derivation of program funds or on the basis that funds are allocated on a year to year basis.

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4/ Blackhawk Vocational, Technical & Adult Education District No. 5 (11726-A) 7/73; and see the Digest of Decisions of the Commission at Digest No. M127 for a complete listing of cases in which this principle has been stated.

Furthermore, although the federally funded teachers are paid on an hourly basis and do not receive all the fringe benefits afforded the locally funded teaching staff, the homogeneity [sic] of the teaching profession outweighs the distinctions in their conditions of employment."

Therefore, the Commission has not considered the source of funding as a basis for excluding federally funded employees from units or in determining voter eligibility of any of the employees serving in the disputed positions.

#### Community of Interest - Instructional and Community Services Division

The parties have stipulated to the inclusion of approximately 160 teachers engaged in the teaching programs of the Instructional Services Division. In fact, the Instructional Services teachers constitute the vast majority of the professionals included in the unit. The parties also have agreed to the exclusion of approximately 800 employees who are engaged in the teaching programs of the Community Services Division. In many of the disputed positions, the Commission determined to include or exclude a disputed position on the basis of the community of interest of said position with the Instructional Services Division teachers who are included in the unit or the Community Services Division employees who are excluded from the unit. In these instances, the Commission determined whether the disputed positions were aligned with or supportive of those employees in the Instructional Services or the Community Services Divisions and accordingly included or excluded the disputed positions on that basis.

#### THE SPECIFIC DISPUTED POSITIONS

In the discussion which follows, the Commission will discuss the professional status and community of interest of each of the disputed positions. The Commission will first discuss the propriety of including in the unit several non-certified counselor positions. It then will discuss the professional status of the three Recruiters. This analysis will conclude with a discussion concerning the inclusion in or exclusion from the unit of several kinds of teachers, namely the ABE and Opportunity Center teachers and the Aviation Teaching Assistants.

#### Non-Certified Counselors:

The parties have stipulated to the inclusion in the unit of certified Guidance Counselors. The stipulation of the parties, in this regard, is in accordance with Commission precedent. The Commission has determined that Guidance Counselors are professional employees 5/ and that they are properly included in a professional unit comprised primarily of teachers.

However, the Employer contrary to Petitioner and Intervenor argues that the following non-certified Counselors should be excluded from the unit:

##### A. Student Services Division

1. Work Evaluation Center Counselors  
Warren Birch and Judith Wiest

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5/ Whitefish Bay Schools (10799) 2/72; Stanley-Boyd Jt. School District No. 4 (11587-A) 7/73; Blackhawk Vocational, Technical & Adult Education District No. 5, supra.



2. Clinical Technician  
Barbara Greene
3. Veterans Counselors  
Richard Lenz and Robert Striffling
4. Union Grove Inmate and CETA Counselor  
David Merscher

B. Community Services Division

1. Adult Basic Education (ABE) Counselor  
Virginia Serrano
2. Women's Bureau Counselors  
Wendy Musich and Bonnie Friday
3. Consumer Consultant  
Virginia Works Peterson

Developmental Center:

At the time of the hearing which was conducted in the Spring of 1975, the Employer projected the establishment of the Developmental Center in the beginning of the 1975-1976 school year. Five separate programs located in the Student Services Division were to be consolidated in one center. These programs are the Work Evaluation Center, the Learning Disabilities Programs, i.e., the program for the educationally mentally retarded, the program for students with hearing impairment, the program for deaf students, and intake. The Counselors in two of the Developmental Center programs are in dispute, here, and they are the Work Evaluation Center Counselors and the Clinical Technician.

The positions of Work Evaluation Center Counselors are occupied by Warren Birch and Judith Wiest. Birch is working towards his Masters degree in Vocational Rehabilitation, and Wiest has a Bachelor of Science degree with a major in Vocational Rehabilitation. They perform the following duties. In the past, when a client was referred to the Work Evaluation Center by a community agency or by a teacher of the Employer, Birch received the referral call and proceeded to conduct the initial interview. The record reflects that, with consolidation, Birch may still conduct most of the initial interview, however, the referral will be made by the Clinical Technician. The person performing the initial interview, Birch or Wiest, then determines which work sampling tests are to be administered. The work sampling tests are then administered by Birch and Wiest, with the aid of the Assistants to the Counselors, Myers and Montfordini. 6/ The tests consist of the client manipulating various machines, tools, etc.; and may take several weeks to complete. Then Birch or Wiest evaluate the test results and make recommendations to the client and other professionals associated with the case, e.g., social workers or teachers, concerning the vocational abilities of the client.

Although both Birch and Wiest function in a narrow and specific area in the field of counselling, the Commission is satisfied that their position requires their use of independent judgment which is based in part upon the knowledge obtained through advanced study. Further, their education and training are intimately related to the job they perform at

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6/ During the course of the hearing, the parties stipulated to the exclusion of Myers and Montfordini from the unit on the basis of their non-professional status.

the Work Evaluation Center, and therefore, the Commission concludes that both Birch and Wiest are professionals within the meaning of MERA.

The Employer claims that Birch is a supervisor. The record reflects that Birch assigns work to Wiest, Myers and Montfordini, the Work Evaluation Center staff, but such assignments are not made on a daily basis. He participates in interviews of new employees. In fact, he interviewed Wiest and recommended her for her position. However, the two higher levels of supervision, Birch's immediate supervisor, Klappauf, and the head of the Student Services Division, Assistant Director Hillery, each interviewed Wiest independently.

Birch discussed a tardiness problem with one employee. However, to date, he has not recommended, nor has he discharged an employee. Birch prepares a budget for the Center, but it is mostly a working document which is substantially altered by Hillery. He does not evaluate employee performance; that function is performed by Klappauf. He may grant an employee short leaves of absence of up to one day. Any leave of substantial length must be approved by a higher level of supervision. However, Birch does spend up to 20 percent of his time in activities which are not duplicated by Wiest. Birch develops additional work samples; he prepares information bulletins and trains new employees. During the 1975-76 school year, it was anticipated that Birch would no longer report to Klappauf, instead he would report directly to Hillery.

The Commission is satisfied that Birch has functioned during his two-year tenure with the Employer as a "leadman", which in this educational setting is analogous to a "department chairman". 7/ Therefore, the Commission concludes that Birch is not a supervisor and he is not excluded from the unit on the basis of supervisory status.

Up to the date of hearing, Barbara Greene was employed as the project assistant to the Learning Disabilities project. As a result of her 50 weeks of employment in this project, the position of Clinical Technician will be created for the 1975-1976 school year. However, with the completion of her task, the position of Project Assistant will be terminated after the conclusion of the 1974-1975 school year. It is evident from the record that if Barbara Greene is employed during the 1975-1976 school year, she will function as the Clinical Technician. In any case, no matter who fills that position, the qualifications and requirements of an individual filling the Clinical Technician position were clearly developed during the hearing.

Barbara Greene, who in effect drafted the requirements for the position, testified that the Clinical Technician would function as the central clearinghouse for the special needs students, i.e., the educationally mentally retarded, the disabled, and the student with hearing impairment. The Technician would direct these students to appropriate available programs, such as the Work Evaluation Center and the Learning Disabilities Program. The Clinical Technician will act as a liaison with community social agencies, and will develop in-service programs to inform faculty of the programs available for "special need" students.

The Clinical Technician will function on a day-to-day basis in the following manner. She will interview a client and complete a form questionnaire. On the basis of the information provided on the questionnaire form, the Technician will determine which Developmental Center program is appropriate for the client. Specifically, if the student has

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7/ Waukesha District 8 Area Board of Vocational, Technical & Adult Education (11076) 6/72.

a hearing problem, she will send him to the Hearing Impairment Program, or if he wishes vocational counselling, she would refer the client to the Work Evaluation Center. The Clinical Technician will not make an independent evaluation of the client's needs or condition. Her primary responsibility will be to have a familiarity with available Employer programs. The Clinical Technician will be required to have at least a bachelor's degree (Greene has a BA in Psychology), but not necessarily in the field of psychology. Based upon the level of academic achievement necessary for the Technician position and the input into the refinement of program in the Developmental Center, the Commission concludes that the Clinical Technician is a professional position.

Turning to the question of unit scope relative to professionals who work in the Developmental Center, it should be noted that as a result of the establishment of the Developmental Center, it was projected that use of the various learning disabilities programs and the Work Evaluation Center will substantially increase from a few students to 50 percent of the client population.

The Commission concludes that as a result of the establishment of the Developmental Center and the inclusion of the Work Evaluation Center in the Developmental Center, and the projected increase in use of the Work Evaluation Center by students, the location of the Work Evaluation Counselors at the Technical Building on the Racine campus, and the professional level of counselling activity provided by the Work Evaluation Counselors, there exists a community of interest between the Work Evaluation Center Counselors and the certified counselors in the unit which justifies their inclusion in the unit. Furthermore, since the Clinical Technician was found to be a professional position, and since that position is an integral part of the Developmental Center and each of its component programs the Commission concludes that the Clinical Technician is properly included in the unit, as well.

#### The Union Grove Inmate and CETA Counselor - David Merscher

Merscher is employed on an hourly basis in the Student Services Division as the Union Grove Inmate and CETA Counselor. In performing his duties, Merscher visits the Union Grove prison farm and counsels those inmates who are enrolled in, and attend, regular credit courses. He works approximately ten hours per week as the Union Grove Inmate Counselor, which work constitutes his practicum for his Masters degree in counselling, which he was scheduled to complete in May, 1975. For approximately 15 to 25 hours per week Merscher is the assigned Counselor for students enrolled in CETA programs in production machine, clerk typing, and welding. The basic difference between the counselling performed by Merscher and the counselling performed by the regular certified Counselors, is that Merscher's assignments are limited to a small segment of students; whereas, the regular certified Counselors counsel the broad range of students.

Merscher has a Bachelors degree. However, the Employer asserts that it is not a prerequisite for his job. Nonetheless, the level of Merscher's counselling work and the level of assistance he provides to his clients are the same as that provided by regular Counselors. The Commission is satisfied that Merscher's educational level of achievement is functionally related to his duties. It is also apparent that the same quality of professional counselling is intended for Union Grove Inmates and CETA programs' participants as for students enrolled in regular Gateway programs. Therefore, the Commission concludes that the Union Grove Inmate and CETA Counselor is a professional position, and accordingly it concludes that the occupant thereof shares a community of interest with the regular

certified counselors. Consequently, the Commission has included him in the unit. 8/

Veterans Counselors - Richard Lenz and Robert Striffling

Both Lenz and Striffling are Veterans Counselors serving a segment of the student population, namely, the veterans. Both are located in the counselling offices used by the regular certified Counselors. If the counselling office is full of students waiting to see a Counselor, both Lenz and Striffling would see regular students, on this basis. The level of professional counselling provided by both Lenz and Striffling is equal to that provided by the certified Counselors. They both work 40 hours per week and they are paid in accordance with the teacher agreement. Finally, Lenz and Striffling have Masters degrees in counselling.

The integration of function, at least with respect to the performance by Lenz and Striffling of regular Counselor duties, and their attainment of an advanced degree in an area of study necessary to, and employed by, them in their work, justifies the conclusion that they are professional employees. The Veterans Counselors here, are readily distinguishable from the Veterans Counselors in Blackhawk, supra, wherein the Commission concluded that the Veterans Officers in those vocational schools were not professional employees. In Blackhawk, the incumbent possessed a two-year associate degree from Blackhawk Technical School. Furthermore, the incumbent did not provide professional counselling to his clients. Thus, the Commission concluded in Blackhawk, that the Veterans officer position did not meet MERA's criteria for professional employees, and accordingly, the Commission found the incumbent to be non-professional. That is not the case here.

The Commission has concluded that the Work Evaluation Counselors, the Clinical Technician, the Union Grove Inmate and CETA Counselor and the Veterans Counselors are professional employees and that the occupants of these positions are properly included in the unit.

The Commission turns to consider the remaining counselor positions, namely the Women's Bureau Counselors, the Consumer Consultant, and the Adult Basic Education (ABE) Counselor. First, the professional status of each position is discussed, then the propriety of including all three positions in the unit is presented.

Women's Bureau Counselors - Wendy Musich and Bonnie Friday

The Women's Bureau is part of the Community Services Division, and it is located at the Employer's Racine campus. Both Musich and Friday have similar educational backgrounds and qualifications. However, all references are made to Musich since it is she who testified at the hearing.

The Director of the Bureau is Ann Timm and she is Musich's immediate supervisor. The Women's Bureau Counselors see women from the community at large. The client interview may be conducted in a group format, with a number of clients participating at the same time, or on an individual basis. The purpose of the counselling is to encourage the woman client to engage in self-assessment of her occupational goals and needs. Musich will often refer clients to other community social agencies for more intensive counselling, if that is necessary. For the most part,

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8/ Blackhawk Vocational, Technical & Adult Education District No. 5 (13460) 9/75 where the Commission found an inmate counselor who was non-degreed and not certified to be a professional and properly included in a teachers unit.

she refers many of her clients to the Employer's non-credit programs or Adult Basic Education Centers, and infrequently to the regular degree programs offered by the Employer.

Musich has a Masters degree in psychology and social work. However, it is her opinion that her advanced degree, although helpful, is not necessary to the fulfillment of her counselling responsibilities. Musich is paid in accordance with Appendix D, Class II, Step 8 of the collective bargaining agreement at the rate of \$12,475. The Employer asserts it is not required to pay the Women's Bureau Counselors in accordance with the agreement, and that it does so only for administrative convenience. Nonetheless, Musich's rate of pay is equal to that of Counselors in the unit.

The record reveals that the Women's Bureau Counselors perform a counselling function. Although, the kind of counselling provided differs substantially from that provided by regular certified counselors, nonetheless, the level of academic achievement attained by the incumbents and the utilization of such training by the incumbents in their counselling work is the basis for the Commission's conclusion that the Women's Bureau Counselors are professional positions. However, the Commission concludes that the Women's Bureau Counselors interact with and are supportive of employees of the Community Services Division who the parties have excluded from the unit, and therefore, the Commission has excluded the Women's Bureau Counselors from the unit.

#### Consumer Consultant - Virginia Works Peterson

Virginia Works Peterson spends approximately half of her time broadcasting a radio show to approximately 14 radio stations in the Racine-Kenosha area. The subject of her show is consumer education and consumer problems, and she is completing her third year on the air. Peterson's program is structured within the Community Services Division. Her immediate supervisor is the Home Economics Coordinator in the Instructional Services Division, Charlotte Yaeger. Many of the topics treated on the radio show are parallel to those topics presented to students enrolled in the regular Home Economics program. The other half of her full-time schedule is spent lecturing before various community groups. On occasion, the ABE Counselor schedules Peterson for a lecture before students using an Adult Basic Education Center. Peterson is paid a salary which coincides with the rate established in the agreement at Class IV, Step 4, and she possesses a Masters degree in Consumer Education.

Intervenor argues that Peterson is part Instructor and part Counselor, and the mode of teaching, i.e., through the radio medium, should not be determinative of her placement in the unit.

Peterson does have a Masters degree in Home Economics. Her primary function is to lecture before community groups and broadcast the radio show. The program she presents is not for credit and not part of the regular instructional program at Gateway. The Commission determines that the Consumer Consultant does require "knowledge of an advanced type in a field of science or learning" to perform her work. Therefore, the Commission concludes that the Consumer Consultant is a professional position. However, the Commission has excluded the Consumer Consultant because that position shares a community of interest with Community Services Division employees excluded by the parties.

#### Adult Basic Education (ABE) Counselor - Virginia Serrano

Serrano is the sole Counselor available to students and members of the community who use the Adult Basic Education Centers and participate

in ABE programs. 9/ The ABE Centers cater primarily to illiterate and semi-literate adults. Although there is no interchange between Serrano and regular certified Counselors, the record reveals that it is Serrano's job to provide the same level of professional counselling to ABE students as is made available to regular students. Serrano has a Masters degree in counselling, and she is certified as a counselor by the Department of Public Instruction of the State of Wisconsin. However, she does not possess sufficient teaching experience to obtain certification from the State of Wisconsin VTAE Board.

The Commission concludes that Serrano is a professional employee in that she employs her education of an advanced type and experience in the performance of her job. However, she is excluded from the unit because the community of interest of the ABE Counselor lies more closely to that of excluded employees in the Community Services Division.

#### Non-Certified Counselors - Summary

The Commission has included the Work Evaluation Counselors, the Clinical Technician, Union Grove Inmate and CETA Counselor and the Veterans Counselors in the teacher unit. Although it has determined that the Women's Bureau and ABE Counselor and Consumer Consultant are professional positions, it has excluded them from the unit on the basis of their lack of community of interest with teachers in the Instructional Services Division.

#### Recruiters - Thomas Krimmel, Tommy Bishop and Espirideon Gomez

Krimmel is the Student Services Assistant School - Community Relations Recruiter, in short Krimmel is the high school recruiter for Gateway's regular degreed programs. Krimmel lectures to high school students; he talks to them on an individual basis and refers them to the counselors and instructors at Gateway who work in the students' area of interest. Krimmel possesses a bachelors degree in psychology. His salary coincides with salaries found on the teacher assistant schedule in the collective bargaining agreement. He works for 50 weeks per year, 40 hours per week.

Tommy Bishop 10/ and Espirideon Gomez are "Minorities" Recruiters in the Community Services Division of Gateway. Bishop recruits in the black communities and Gomez in the Spanish-speaking communities in the District. Bishop refers most of his recruits to the Adult Basic Education program, although he does recruit some of his students into Gateway's regular programs. Both Bishop and Gomez attend monthly meetings attended by other counselors.

Bishop is six credits shy of a Masters degree in counselling. He is certified by the Department of Public Instruction in French and Social Studies. However, he assumes no teaching functions at Gateway. Gomez has no more than a high school or high school equivalent diploma. The Employer does not require that its recruiters have a bachelors degree.

The Commission is satisfied that the duties of all three recruiters are quite similar to those performed by the High School Relations Officer discussed in Blackhawk Vocational, Technical & Adult Education District No. 5 (13460-A) 9/75, where the Commission found that position to be non-professional. There is nothing in this case to distinguish Krimmel,

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9/ A more detailed description of ABE programs may be found, infra.

10/ Only Bishop testified at the hearing.

Bishop and Gomez from the High School Relations Officer described in Blackhawk, supra. Accordingly, the Commission concludes that Krimmel, Bishop and Gomez are not professional employees and they are not included in the teacher unit.

#### Opportunity Center Teachers 11/

There are three Opportunity Centers within the Instructional Services Division of Gateway, with one center located at each of Gateway's campuses in Kenosha, Racine and Elkhorn. The centers are opened from 8:00 a.m. to 3:00 p.m. during the school year. The centers are staffed by part-time teachers (who work between three and 18 hours per week) and whose tenure of employment is conditioned upon funding and level of use of each center. The teachers are paid on an hourly basis and are normally told the number of hours work required of them each semester.

The Opportunity Center teachers provide tutorial instruction to regular Gateway students enrolled in degreed programs. Course outlines, textbooks and materials are maintained at the Centers. Students, at first, drop in and explain the areas in which they are having difficulty. The Opportunity Center teacher then tutors that student in his course work. Most students drop in once or twice per semester. However, each teacher may tutor several students over the course of an entire semester. For example, Burns tutors students in reading and math. She keeps records of student progress. In some instances the Opportunity Center teacher contacts the regular instructor concerning a student's problems in that instructor's class.

The Commission is satisfied that the Opportunity Center teachers actually teach and their functions are not clerical in nature, like those of a teacher aide. The Commission is satisfied that the Opportunity Center teacher requires the "knowledge of an advanced type" described in MERA. Although the Opportunity Center teachers do not carry a pre-determined case load or teach specific subjects, the record reflects that Opportunity Center teachers possess a background in education and they work with students in support of the educational program. Therefore, the Commission finds that the Opportunity Center teachers are professional employees and they share a community of interest with other instructional personnel in the unit.

#### Aviation Teaching Assistants - Wayne Dunai and Dan Winfield

There are six or seven instructors who are both FAA licensed and VTAE certified teachers in Gateway's Aviation Pilot Training Program. Dunai and Winfield are the teaching assistants in this program. Neither Winfield nor Dunai possess a bachelors degree. They maintain the equipment and set up demonstrations for the instructors. However, both Dunai and Winfield are FAA licensed instructors, and accordingly, they do take students up in the planes. The instructors are responsible for student interviews, ground training, pre-flight lectures and FAA tests.

The unit certified by the Commission in 1972 included certified teaching assistants. Although the teaching assistants were inadvertently omitted from Petitioner's amended petition (though present in the original

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11/ JoEllen Burns was the only Opportunity Center teacher who testified. She has a Bachelors degree plus nine credits. There is nothing in the record to indicate that any Opportunity teacher has anything less than a Bachelors degree.



petition) the Commission deems it appropriate to include the certified teaching assistants in the unit.

The Commission is satisfied that Dunai and Winfield are professional pilots, and as such are professionals under MERA. Since they participate in the instruction of aviation students by taking them up on instructional flights, the Commission concludes that they are properly included in the teacher unit with the certified teaching assistants.

#### Adult Basic Education Teachers

John Lehman was the only one, of approximately nine ABE teachers, who testified at the hearing. The Commission has inferred that his qualifications and duties approximate those of the other ABE teachers.

There are five ABE learning centers. They are located throughout the Employer's District in storefronts. The Centers are open at different times during the day and evening, with several centers open six days per week, 52 weeks per year. The Centers are staffed by at least one instructor and an aide. 12/ The ABE Centers service four kinds of students: (1) those seeking a general equivalency high school diploma; (2) those learning English as a second language; (3) those taking typing lessons; and (4) those doing remedial work in high school level courses.

Students drop in to the storefront Centers as often as they like, whenever they like. Most instruction at the center is on an individualized basis. Students studying for an equivalency diploma are taught on a one-to-one basis. The instructor administers achievement tests. Typing instruction and assistance is provided mostly by the aide. However, the students learning English as a second language use self-instructional materials, and those students doing remedial work in reading and math are taught primarily on a one-to-one basis.

The ABE teachers are "approval" certified pursuant to A-V 3.02 of the Wisconsin Administrative Code. 13/ The State VTAE Board requires ABE

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12/ The parties stipulated to the exclusion of the ABE aides.

13/ A-V 3.02 reads as follows:

"A-V 3.02 Instructional staff. (1) GROUP IDENTIFICATION. Teaching certification is required of those persons in each district who are employed as instructors.

(2) APPROVAL REQUIREMENTS. (a) Educational and occupational experience shall be appropriate to the subject being taught as evaluated by the board staff. In general the requirements which apply for provisional certification will be used to evaluate part-time personnel or limited term personnel teaching in special projects such as manpower development and training act programs, adult basic education programs or other unique programs for the disadvantaged or handicapped.

(b) Driver education teachers shall hold a valid Wisconsin drivers license and shall have completed 9 collegiate semester hours of approved credits in the field of driver safety education. Three collegiate semester hours shall be in basic driver education, 3 in safety education, and 3 in advanced driver education.

(3) PROVISIONAL CERTIFICATION REQUIREMENTS. (a) Education. 1. A bachelors degree or equivalent as defined in section A-V 3.01 (5) (g).



instructors to have a bachelors degree. Furthermore, the ABE teachers are engaged in teaching students. They are paid between \$7.00 - \$8.25 per hour depending on their experience. Many teachers work in excess of 30 hours per week and receive some fringe benefits.

The ABE teachers are degreed and certified albeit only at the "approval or provisional level. They are engaged in teaching, and the Commission concludes they are "professional" under MERA. However, the Commission has excluded the ABE teachers from the unit because they lack a community of interest with the instructional personnel employed in Gateway's regular programs. The great disparity in educational programs between the ABE and regular degreed programs at Gateway gives rise, as well, to a disparity in working conditions for ABE and regular teachers. The ABE teachers (and counselor) have a greater community of interest with those employes in the Community Services Division than with the regular instructors in the Instructional Services Division. Therefore, the Commission has excluded the ABE teachers from the unit. Finally, the ABE teachers may be included in a residual unit comprised of professional positions not included in the instant unit. 14/

#### Recruiters and Teachers - Summary

The Commission found that the Recruiters are not professional employes and are to be excluded from the teacher unit. The Commission has excluded ABE teachers because they lack a community of interest with regular instructors. The Commission also determined that the Opportunity Center teachers and the Aviation Teaching Assistants are professional employes who are engaged in teaching students enrolled in Gateway's degreed programs, and therefore are properly included in the teacher unit.

Based upon the above discussion, the Commission has directed an election in a unit described as:

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#### 13/ (Continued)

2. Twenty semester credits in the appropriate area is required for certification in academic subjects.

3. Required occupational experience may be substituted for credits when certification is requested in an occupational subject area.

(b) Occupational experience. 1. Academic subject instructors shall be required to have 6 months of non-described occupational experience in field other than education.

2. Occupational subject teachers shall be required to have 12 months of verifiable experience as a fully qualified worker in each occupational area where certification is requested.

(c) Teaching experience. None required.

(d) Renewal. The provisional certificate shall be valid for 2 years. The provisional certificate may be renewed if during the provisional certification period, the applicant makes satisfactory progress toward earning a standard 5-year certificate. Satisfactory progress shall be 6 approved semester credits or 2 months of approved appropriate occupational experience."

14/ See Waukesha District 8 Area Board of Vocational, Technical & Adult Education (13818) 9/75.

"All full-time and regular part-time instructional personnel, including teachers, Counselors, librarians, program chairmen, developers, Opportunity Center teachers, certified teaching assistants and aviation teaching assistants, but excluding the ABE teachers and the ABE Counselor, the Recruiters, the Women's Bureau Counselors, the Consumer Consultant, Community Services Division instructional personnel, supervisory, managerial and confidential employees, custodial employees and clerical employees and all other employees."

Dated at Madison, Wisconsin this 1st day of March, 1976

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Howard S. Bellman

Howard S. Bellman, Commissioner

Herman Torosian

Herman Torosian, Commissioner