

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

No. 14392-A

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

The instant proceeding was initiated by the union requesting clarification of the collective bargaining unit of employees of the district. Generally, the union seeks to include in the unit certain secretarial, clerical employees as well as teacher aides employed by the district in its administrative offices and in its various schools.

Petitioner in April 1969 was certified as the representative of the district's custodial and maintenance employees 1/ and in January 1970 the petitioner was certified as the representative of all clerical employees of the district. 2/ The parties had agreed at the times involved that each unit was an appropriate unit. However, in the 1975-1976 collective bargaining agreement existing between the parties the parties combined said two units into one unit as set forth in the recognition article of the agreement:

"The Board recognizes the Union as the exclusive bargaining unit for all regular full-time and regular part-time clerical, custodial and maintenance employees, except supervisory and confidential employees. The Superintendent's secretary, the Business Manager's secretary, the Bookkeeper and Purchasing Clerk will be considered confidential employees and not part of the bargaining unit. (Note: the WERC will clairify [sic] the bargaining unit which may result in contract changes)."

At the time of the hearing the district employed 250 certified teachers, 37 clerical type employees, 28 maintenance employees, 34 food service employees and 11 teacher aides. Said collective bargaining agreement also sets forth the job descriptions of the various classifications included in the described bargaining unit. The "clerical-typists" duties are set forth as follows:

"I. Duties

- A. General clerical work
- B. Arrange and type letters, reports and memos as assigned
- C. Filing
- D. Incoming and outgoing mail
- E. Duplicating work
- F. Other clerical tasks similar, related or incidental as assigned
- G. Type no less than 45 words per minute with minimum or error
- H. Will be assigned to positions in roles of Library Clerks, Instructional Clerks, Audio-visual Clerks, Switchboard Operators, etc."

In its brief, the district asserted for the first time that the foregoing contractual language should estop the union from challenging the confidential status of the Secretary to the Business Manager and the Bookkeeper.

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1/ Decision No. 8940.

2/ Decision No. 9400.

Since in its certification involving the clerical employees the commission did not specifically exclude the Secretary to the Business Manager and the Bookkeeper from the unit, but excluded among others, "confidential employees". The commission will determine herein whether said two positions are in fact confidential.

During the course of the hearing conducted on April 5, 1976, the parties stipulated to the inclusion and exclusion of certain positions. Specifically, the parties agreed to the appropriate inclusion of the Purchasing Clerk and all teacher Aides, with the exception of the positions occupied by Betty Silvers and Mardy Cooper. The parties further stipulated to the exclusion of the Executive Secretary to the District Administrator (Karen Zierath), and the Administrative Secretary to the Director of Instruction (Gloria Walsh) from the certified collective bargaining unit. The remaining positions in dispute between the parties are as follows: Administrative Secretary to the Business Manager (Nancy Strommen), Bookkeeper (Mary Navis), Copy Machine Operator (Polly Mills), Teacher Aide - Senior High Library (Betty Silvers) and Teacher Aide Northside School (Mardy Cooper).

#### Administrative Secretary to the Business Manager

Nancy Strommen is employed as the Administrative Secretary to the Business Manager, Bill Palmer. The office of the Business Manager is located in a building distinct from that housing the offices of the District Administrator and Director of Instruction. Whereas the personnel files of the certified teachers and teacher aides employed by the district are maintained in the office of the Director of Instruction, the personnel files of clerical, custodial and food service employees are located in the Business Manager's office. Accordingly, Mr. Palmer and his staff become involved in the handling of grievances relating to those particular employees. In addition to Ms. Strommen, the Purchasing Clerk and Bookkeeper report to Mr. Palmer.

In the past, the Business Manager has participated on behalf of the Municipal Employer in the preparation for and conduct of negotiations with the district's certified and non-certified personnel. He is responsible for compiling and analyzing financial data employed during contract negotiations and developing district bargaining proposals related thereto.

The Secretary to the Business Manager is responsible for typing all correspondence relating to grievance, probationary periods, evaluation and dismissal proceedings for the District's non-certified employees. In addition, Ms. Strommen types all non-economic, or language bargaining proposals of the management team for use in negotiations with the collective bargaining unit consisting of non-certified employees. As a result of her frequent work with personnel files Ms. Strommen is the only clerical employee who has a key to the personnel files of non-certified employees.

In light of Ms. Strommen's involvement in preparations for the bargaining process and access to confidential correspondence and files, the commission is satisfied that Nancy Strommen is a confidential employee appropriately excluded from the collective bargaining unit herein.

#### Bookkeeper

Mary Navis is employed by the Municipal Employer as Bookkeeper, assigned to the Business Manager's office. Ms. Navis is responsible for the district's general payroll activities. Such duties include the computation and issuance of paychecks, and posting of benefits such as vacation and sick leave.

Ms. Navis assists the Business Manager in the development of the district's budget. In particular, Ms. Navis projects salaries for

the certified and non-certified employees and costs out bargaining proposals relevant to economic items. The commission is satisfied that Mary Navis actively participates in confidential matters relating to labor relations. Accordingly, the position of Bookkeeper is found to be appropriately excluded from the existing collective bargaining unit.

#### Copy Machine Operator

The district employs Polly Mills as Copy Machine Operator in the district's centralized duplication facility. The copy machine operator is directly supervised by the Business Manager and works in the immediate vicinity of the Business Office. All material in need of duplication is processed by Ms. Mills and copied on photocopy offset. Ms. Mills duplicates copies of bargaining proposals, including salary schedules and strategy memoranda, for distribution to the district's board members and bargaining team. Copies of correspondence relating to grievances and written communication and materials sent to the district's attorney are handled and copied by Ms. Mills. The Copy Machine Operator performs work for various managerial employees including the Business Manager, Director of Instruction and Superintendent.

The commission notes the centralized nature of the district's copy center and the concentrated use of one employee to operate the same. Ms. Mills' access to confidential correspondence and materials concerning labor relations satisfies the commission that the position of Copy Machine Operator is appropriately excluded from the collective bargaining unit herein.

#### Teacher Aide - Senior High School Library Teacher Aide - Northside School

Betty Silvers is employed in the Senior High School Library as a Teacher Aide. Mardy Cooper works as a teacher aide in the Northside Elementary School. Whereas the parties stipulated to the inclusion of all other teacher aides employed by the district, the Municipal Employer contests the inclusion of Ms. Silvers and Ms. Cooper on the basis that they each spend a substantial amount of working time in direct contact with students. Ms. Silvers spends approximately 50% of her working time directly assisting students in the selection of instructional materials. The remainder of Ms. Silvers' work time is devoted to the performance of clerical tasks. Ms. Cooper works directly with individuals of small groups of elementary students 75% of her time. She performs clerical duties during the remaining 25% of her work time.

The Municipal Employer argues that Ms. Silvers and Ms. Cooper are employed as paraprofessionals and accordingly, have no community of interest with clerical employees who have little or no student contact. The district argues that the two aforementioned teacher aides constitute a group of employees separate and distinct from the clerical employees and accordingly, should be excluded from the clerical unit herein. The district cites the commission's decision in Milwaukee Voc. District No. 9 (10882) 3/72, wherein teacher aides who spent more than 50% of their time in instructional and student contact were found to constitute a separate unit, as support for its position.

The commission's function herein is to determine whether Betty Silvers, a library aide at the Senior High School, and Mardy Cooper, an instructional aide, should be included in the collective bargaining unit described in the collective bargaining agreement existing between the parties.

Section 111.70(4)(d)2a of MERA, provides:

"The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, division, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if that unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. \* \* \*"

The above statutory provision primarily imposes an obligation on the commission to "whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force." 3/ If the commission were to agree with the district's position, it could possibly result in the creation of a bargaining unit of two non-professional positions. The commission in the past has included teachers aides, library aides, and nurses aides in a unit of office employees 4/ The commission has also found that all non-certified employees of a school district do constitute an appropriate bargaining unit. 5/ We also found non-professional school employees consisting of teacher aides, clerical and playground supervisors to constitute a single bargaining unit. 6/ Where, in a large school district, because of the large size of the clerical and custodial units and a large number of teacher aides, the commission established a separate unit consisting of said aides. 7/

In balancing the factors in the instant case, i.e., the size of a separate unit, the percent of time clerical work is performed by the two employees in issue, and the principle of antifragmentation, the

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3/ Milwaukee County, Dane Co. Cir. Ct. 6/76 (Aff. Commission decision 14571, 3/74).

4/ Hortonville Jt. School Dist. No. 1, (11255), 10/72.

5/ Gibraltar Board of Education, (11339), 10/72.

6/ Merton Jt. School Dist., (12085), 8/73.

7/ Madison Jt. School Dist. No. 8, (12654), 4/74.

commission concludes that the library aide and instructional aide should be included in the collective bargaining unit described in the parties' collective bargaining agreement.

Dated at Madison, Wisconsin this 10th day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
Morris Slavney, Chairman

German Torosian  
German Torosian, Commissioner

Charles D. Hoornstra  
Charles D. Hoornstra, Commissioner