



of the parties, and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit and Amending Certification.

FINDINGS OF FACT

1. That Madison Teachers Incorporated, hereinafter referred to as MTI, is a labor organization representing employes for the purposes of collective bargaining and has its offices at 121 South Hancock Street, Madison, Wisconsin.
2. That the Madison Metropolitan School District, hereinafter referred to as the District, is a Municipal Employer employing professional and non-professional employes in the operation of a public school system, and has its primary office at 545 West Dayton Street, Madison, Wisconsin.
3. That the Wisconsin Council of County and Municipal Employees, AFSCME, Council 40, AFL-CIO, hereinafter referred to as Local 60, is a labor organization representing employes for the purposes of collective bargaining and has its offices at Five Odana Court, Madison, Wisconsin, and that at all times material herein Local 60 has been, and is the collective bargaining representative of non-supervisory custodial and maintenance employes in the employ of the District.
4. That at all times material herein, MTI has been, and is the certified collective bargaining representative for employes of the District in the following-described bargaining units:
  - a. All full-time and regular part-time employees employed by the Madison Metropolitan School District and engaged in secretarial, clerical, technical and related office duties, but excluding craft, professional, confidential, supervisory and managerial employees, and all other employees of the District.
  - b. All regular full-time and regular part-time certificated teaching personnel employed by Madison Metropolitan School District, including psychologists, psychometrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading teacher, University Hospital teachers, trainable group teachers, librarians, cataloger, educational reference librarian, text librarian, Title I coordinator, guidance counselors, teaching assistant principals (except at Sunnyside School), teachers on leave of absence, and teachers under temporary contract, but excluding supervisor - cataloging and processing, on call substitute teachers, interns and all other employes, principals, supervisors and administrators.
5. That on or about March 28, 1977, MTI in its capacity as the collective bargaining representative for the employes of the District in the unit noted in paragraph 4(a), supra, petitioned the Wisconsin Employment Relations Commission to issue an Order clarifying such collective bargaining unit by determining whether the positions listed below should be included in or excluded from such collective bargaining unit:

<u>Position Title</u>	<u>Occupant</u>	<u>Placement</u>
Secretary II	Mary Kennedy	Instructional Services Division
Secretary I	Lavaune Blaska	Instructional Services Division
Administrative Clerk I	Kristine Schroeder	Superintendent's Office

<u>Position Title</u>	<u>Occupant</u>	<u>Placement</u>
Administrative Clerk I	Marilyn Miller	Employee Services
Administrative Clerk I	Phyllis Gibson	Employee Services
Administrative Clerk II	Florence Dagneau	Employee Services
Stock Clerk	Roger Hotchkiss	Payroll & Purchasing
Stock Clerk	Daniel Kleist	Payroll & Purchasing
Stock Clerk	Lester Bringe	Payroll & Purchasing
Stock Clerk	James Freeman	School Community Recreation
Store Keeper	Larry Thomas	Payroll & Purchasing
Store Keeper		
Leadman	Fred Wirth	Payroll & Purchasing
Clerk Typist I		Instructional Services
Clerk Stenographer	Catherine Knechtges (Replacement for)	Employee Services
Clerk Typist II	Ruth Showers	Registrar/Student Records
Clerk Typist II	Donna Diedrich	Employee Services
Clerk Typist II	Marcia Pierce-McCloud	Employee Services
Clerk Typist II	Dorothy Olson	Employee Services
Budget Analyst	Russell Torgeson	Comptroller's Office
Accounting Manager	Charles Meyer	Comptroller's Office
Accountant II	Charles Larson	Comptroller's Office
Accountant I	Art Boyce	Payroll/Purchasing Services
Accountant I	Charles Markle	Payroll/Purchasing Services
Administrative Assistant	Naomi Metzker	Building Services
Supervisor, Audio Visual Services	Mike Mattison	Administrative Services/ Instructional Support Services
Photographer-Technician	Ronald Austin	Administrative Services/ Instructional Support Services
Text Materials Supervisor	Harold Gall	Administrative Services/ Instructional Support Services
Graphic Artist	Pat Connors	Administrative Services/ Instructional Support Services
Substitute Placement Secretary	Ruth Showers	Employee Services
Substitute Placement Secretary	Sue Schoeffel	Employee Services
Supervisor of Transportation	Miles Mitchell	Administrative Services/Registrar, Student Records/Transportation
Coordinator Exchange	Thomas Swenson	Instructional Services Division
Project Assistant	Fred Greco	Instructional Services Division
Project Assistant	Muriel Katzenmeyer	Instructional Services Division
Project Assistant	Barbara Albrecht	Instructional Services Division
Project Assistant	Allan Roecks	Instructional Services Division
Investigation	Lajos Biro	Instructional Services Division

6. That during the course of the hearing MTI in its representative capacity of the employees in the unit described in paragraph 4(b), supra, also appeared on behalf of said unit with regard to various positions set forth in paragraph 5, supra.

7. That also during the course of the hearing Local 60 was permitted to intervene in the instant matter, with respect to its interest in various positions set forth in paragraph 5, supra, on the basis that it is the collective bargaining representative of non-supervisory custodial and maintenance employees in the employ of the District.

8. That during the course of the hearing the parties entered into various stipulations with regard to various positions in issue herein as follows:

- a. That the following positions and the employees occupying same are appropriately included in the custodial and maintenance unit represented by Local 60:

<u>Position</u>	<u>Occupant</u>
Stock Clerk	Hotchkiss, Kleist, Bringe and Freeman
Store Keeper Leadman	Wirth

- b. That the following positions and the employees occupying same are appropriately included in the secretarial, clerical and technical unit represented by MTI:

<u>Position</u>	<u>Occupant</u>
Store Keeper	Thomas
Graphic Artist	Connors
Secretary I	Replacement for Blaska
Clerk Stenographer	Knechtges
Clerk Typist I	Brandt
Clerk Typist II	Gibson, Diedrich, Pierce-McCloud and Olson
Substitute Placement Secretary	Showers and Schoeffel

9. That also during the hearing the parties stipulated that the following positions, and the occupants thereof, should be excluded from any existing collective bargaining unit on the basis of their supervisory(s) or confidential (c) status:

<u>Position</u>	<u>Occupant</u>
Coordinator Exchange	Swenson (s)
Supervisor, Audio Visual Services	Mattison (s)
Secretary to Superintendent <u>3a/</u>	Harris (c)
Secretary II - Secretary to Assistant Superintendent	Kennedy (c)

Position

Occupant

Secretary to Director of  
Employee Services 3c/

Morben (c)

Administrative Clerk I  
Secretary to Coordinator of  
Employee Services

Miller (c)

Administrative Clerk II

Dagnau (s)

10. That following the conduct of the hearing, MTI, in its brief, requested that the Text Material Supervisor, Harold Gall, and the Administrative Assistant, Naomi Metzger, be withdrawn from its petition; that during the course of the hearing evidence was adduced with respect to the duties of said positions and that said evidence established that the occupant of the Text Material Supervisor position performs managerial functions, and that Administrative Assistant Metzger effectively supervises and evaluates employees working under her direction and control.

11. That therefore the following positions, and the occupants, thereof remain in issue; that all of said positions are professional, with the exception of the Supervisor of Transportation; and that the District contends that said positions are either supervisory (s), managerial (m); temporary or casual (t/c); or lack a community of interest with teaching personnel (\*):

Position

Occupant

Supervisor of Transportation

Mitchell (m)

Project Assistants, Principal  
Investigators, Researchers

Katzenmeyer, Greco, Albrecht,  
Roecks, Biro, and Madding (t/c)

Photographer Technician

Austin (m)

Accounting Manager

Meyer (s)(\*)

Budget Analyst

Torgeson (\*)

Accountant II

Larson (\*)

Accountant I

Boyce and Markle (\*)

12. That Miles Mitchell, the Supervisor of Transportation, coordinates the transportation of students to and from various schools; that such transportation is provided by contract carriers and a number of parents, who are also compensated for same; that while Mitchell's duties includes some administrative functions, said functions are routine in nature; that Mitchell does not participate in the formulation or determination of the transportation policies of the District, except as a resource person; and, further that Mitchell has no authority to commit the District's resources beyond those previously established by managerial personnel and the Board members of the District.

13. That the individuals occupying the positions of Project Assistants, Principal Investigators, Researchers have worked a substantial number of hours on a regular part-time basis for periods ranging from sixteen months to three years in areas directly relating to the education program of the

District; and that while the occupants of said positions do not have full-time employment, they are neither temporary nor casual employees, but rather are regular part-time employees because of their fixed length of employment.

14. That Ronald Austin, the Photographer Technician, does not have the authority to commit the District's resources, nor does he participate in the formulation or determination of management policies; and that Austin does share a community of interest with teachers in that his duties require that he work directly with teachers and students in support of the District's educational program.

15. That the duties of Charles Meyer, the Accounting Manager, primarily include the effective supervision of employees performing accounting and supportive duties; that while said position, as well as the positions of Budget Analyst, Accountant II and Accountant I are professional positions, the occupants thereof perform duties not directly supportive of the educational program of the District; and that therefore the occupants thereof lack the necessary community of interest to warrant their inclusion, by unit clarification, in the unit consisting of teachers and related positions.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. That the positions of Supervisor of Transportation, Project Assistant, Principal Investigators, Researchers, Photographer Technician, Budget Analyst, Accountant II and Accountant I are occupied by individuals who are employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That the position of Accounting Manager is occupied by an individual performing sufficient supervisory duties so as to constitute such position a supervisory position within the meaning of Section 111.70(1)(o) of the Municipal Employment Relations Act.

3. That, in order to carry out the mandate set forth in Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act,

- a. The position of Supervisor of Transportation is properly included in the collective bargaining unit consisting of secretarial, clerical, technical and related office employees, which unit is represented by Madison Teachers, Inc.
- b. The positions of Project Assistant, Principal Investigators, Researchers, and Photographer Technician are properly included in the collective bargaining unit consisting of certified teachers and related employees, which unit is also represented by Madison Teachers, Inc.
- c. The positions of Budget Analyst, Accountant II and Accountant I will not be included in any presently collective bargaining unit of employees of the Madison Metropolitan School District, unless in a proceeding initiated, pursuant to Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, the occupants of such positions vote to be so included.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

#### ORDER CLARIFYING BARGAINING UNITS AND AMENDING CERTIFICATIONS

1. That the position of Supervisor of Transportation shall be, and hereby is, included in the unit consisting of all full-time and regular

part-time employees engaged in secretarial, clerical, technical, and related office duties in the employ of Madison Metropolitan School District; and therefore, the existing collective bargaining unit, presently represented by Madison Teachers Incorporated, is hereby amended to read as follows:

"All full-time and regular part-time employees engaged in secretarial, clerical, technical and related office duties, including the Supervisor of Transportation, but excluding craft, professional, confidential, supervisory and managerial employees and all other employees."


2. That the positions of Project Assistants Principal, Investigators, Researchers and Photographer-Technician shall be, and hereby are included in the unit consisting of all regular full-time and regular part-time certified classroom teachers in the employ of Madison Metropolitan School District; and therefore the existing professional bargaining unit presently represented by Madison Teachers, Inc., is hereby amended to read as follows:

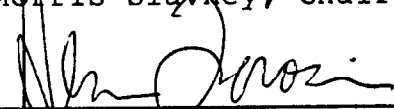
"all regular full-time and regular part-time teaching and other related professional personnel who are employed in a professional capacity to work with students and teachers, employed by the District including psychologists, psychomotrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading teacher, University Hospital teachers, trainable group teachers, librarians, cataloger, educational reference librarian, text librarian, Title I coordinator, guidance counselors, teaching assistant principals (except at Sunnyside School), project assistants, principal investigators, researchers and photographer technician, but excluding supervisor - cataloging and processing, on call substitute teachers, interns, and all other employees, principals, supervisors and administrators."

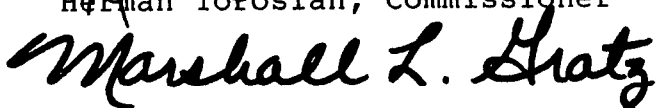
Given under our hands and seal at the City of Madison, Wisconsin this 31st day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slawney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner

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

As noted in the Findings of Fact, this instant proceeding initially involved the unit placement of a number of positions occupied by employees of the District, which positions are not presently in any of the existing units of the District's employees. Through the process of stipulation and motions the parties reduced a number of positions in issue to those occupied by thirteen employees, as noted in paragraph 11 of the Findings of Fact, which finding also indicates the grounds set forth by the District in support of its position that the occupants of said positions should be excluded from the units represented by MTI. MTI would have the Commission include said positions in either the clerical or professional units represented by it. The parties, by stipulation, disposed of all issues involving the unit represented by Local 60. We deem it appropriate to set forth in detail in this memorandum, the nature of the duties and responsibilities of the positions remaining in issue.

Supervisor of Transportation (Miles Mitchell)

The District by contract carrier, provides transportation to children in both public schools and in private schools who live in the district. Such transportation is provided to approximately 3,000 students in the public school system, approximately 600 students in the private school system, and approximately 500 students in special education classes which are conducted in the public schools. A limited number of parent provided transportation contracts are in existence as well. The Supervisor of Transportation directs, blends, organizes, and oversees the transportation of students in the District.

While it is obvious from the record that the Supervisor of Transportation performs numerous functions relating to the transportation policies and programs of the District, the evidence fails to support the contention of the District that the position of Supervisor of Transportation is a managerial position. Section 111.70(1)(b) of MERA excludes "managerial employees" from the definition of the term "municipal employees". The exclusion is based upon the underlying theory that managerial employees exercise duties which are indicative of interests different from those of the bargaining unit personnel. 4/ The uniqueness of managerial employees stems from their participation in the formulation, determination and implementation of policy, and the resulting responsibility for such participation, and/or authority to commit the employer's resources. 5/ Mitchell does not plan the specific transportation policy of the District. In addition, he has no significant policy-making authority. He does not negotiate contracts with the transportation providers, nor does he determine the extent of the transportation budget of the District. While the Supervisor of Transportation assists in the preparation of the transportation budget, the decisions as to contract costs to be allocated to providers of transportation are not made by the Supervisor of Transportation in the payment of transportation bills. The Supervisor of Transportation acts in a ministerial capacity. His primary function is to see that the bills are paid in accord with contracts entered into directly with the District. The Supervisor of Transportation does not have discretionary functions concerning amounts to be



The Supervisor of Transportation is paid bi-weekly on the classified payroll, the same payroll used for computing payments for the clerical bargaining unit. In addition, the occupant of the position receives the same fringe benefits as other classified employees who are represented by MTI. The functions performed by the Supervisor of Transportation are basically those of providing input for decision making by administrative and managerial personnel of the District and the members of the Board of the District. Significantly, Mitchell's immediate supervisor is the Registrar, who in turn is responsible to the Assistant Director for Administrative Services, who in turn is responsible to the Director of Business Services, who is responsible to the Superintendent. The Supervisor of Transportation has the responsibility of implementing the policies established by others relating to the transportation of students residing in the District.

The Commission has determined that managerial status requires participation in the formulation, determination and implementation of management policy, and/or the effective authority to commit the employer's resources. 6/ We conclude that the position of Supervisor of Transportation is not a managerial position. There is minimal participation in the actual formulation of managerial policies relating to the District's transportation policies. In addition, the Supervisor of Transportation has no authority to commit or re-distribute the District's budget allocations for transportation. Thus, the position of Supervisor of Transportation is appropriately included in the unit consisting of the secretarial, clerical and technical and related office employees' bargaining unit represented by MTI.

#### Project Assistants, Principal Investigators and Researchers

The employees in the job titles which are in dispute have worked the following periods of time:

Muriel Katzenmyer (Principal Investigator) - 16 months, approximately 30 hours per week.

Fred Greco (Principal Investigator) - 1 1/2 years, approximately 35 to 40 hours per week.

Barbara Albrecht (Principal Investigator) - 2 1/2 years, approximately 30 hours per week.

Lajos Biro (Principal Investigator) - 3 years, approximately 30 hours per week.

Rebecca Madding (Project Assistant) - 2 years, approximately 20 or 25 hours per week.

Allan Roecke (Project Assistant) 7/

The District contends that since the positions for which the above-listed individuals were hired are temporary in nature, the occupants thereof are casual employees and should be excluded from the professional unit. MIT contends that the individuals occupying these positions have been employed by the District for substantial periods of time and that they perform their functions on a regular basis. The Commission has long held that the determinative factor in deciding whether an employee is casual is the regularity of employment rather than the number of hours worked. 8/

---

6/ City of New London (12170) 9/73.

7/ Although there was no testimony proffered concerning Allan Roecke, the parties agreed that Roecke's duties were the same as the other Projects Assistants and that his conditions of employment were also the same.

8/ Tomah Area School District No. 1, (8209-D) 5/78; Richard County (11484) 12/72; Florence County Jt. School District No. 1 (6677) 3/64; Goodman-Armstrong Jt. School District No. 1 (10216) 3/71.

Regularity of employment does not presume that the particular position in question will always be in existence; nor does it presume that the individual occupying that position will permanently remain in that position. This Commission, in discussing the regularity of employment of temporary contract teachers, has stated:

"Teachers under temporary contract certainly have as much interest in the wages, hours and working conditions governing their employment as the other part-time regular employees in the bargaining unit. Since the Employer hires temporary teachers year in and year out, sometimes hiring the same persons for consecutive years, and since temporary contract teachers spend substantial periods of a work year earning their livelihood as such teachers, both the nature of the positions they fill and the resultant substantiality of the employment relationship requires the conclusion that they are employees within the meaning of the Municipal Employment Relations Act with all the rights and privileges contained therein." 9/

While it is true that the individuals occupying the positions of Project Assistants, Principal Investigators and Researchers may in fact hold those positions for specified periods of time, the record is clear that the positions themselves are not temporary or casual. Some projects run for several consecutive years; and at least one project is expected to run for at least ten years. The positions themselves thus entail substantial employment relationships between the District and the individuals in those positions. The employees in those positions are to be afforded the protections of the Municipal Employment Relations Act. We thus conclude that the employees occupying the positions of Project Assistant, Principal Investigator and Researcher are employees within the meaning of MERA, and are entitled to be included in the unit consisting of certified teachers and related professional employees. 10/

#### Photographer-Technician (Ronald Austin)

The District contends that this position does not share a community of interest with members of the teacher bargaining unit, and that Austin is a managerial employee.

The primary function of the Photographer-Technician is that of supervision of the audio-visual department and the production of film strips, slide sets, and similar audio-visual materials for the teachers employed by the District. Austin sometimes prepares instructional material at the request of teachers; in addition, he periodically teaches, conducts demonstrations, and helps explain to students the art of photography. When working with students, he usually works on a consultant basis. Austin has no clerical support staff; however, he does have minimal supervisory responsibility over an Audio-Visual Assistant who works in the same department with Austin.

The testimony establishes that Austin works directly with administrative personnel and with teachers throughout the District in producing audio-visual materials frequently used in the instructional process. Austin lends direct support to the instructional process. He works on projects involving teachers and students, including conducting teacher workshops, laminating and taping requests for specific instructional materials, and sometimes demonstrates the techniques of photography. He also assists students who are working on yearbook projects. His substantial contact with teachers

---

9/ Madison Metropolitan School District (14161-A) 1/77.

10/ The District does not contest their community of interest with professional employees in the teacher and related unit.

and with students in the performance of his duties, as a professional, gives him a clear community of interest with employees in the unit consisting of certified teachers and related professionals.

The evidence did not support a finding that Austin is a managerial employee. Austin does not prepare the budget for the audio-visual program, and he is not involved in the establishment of policies for the audio-visual department of the District. While it is true that Austin does have an administrative contract with the District, we conclude that Austin does not have authority to commit the District's resources, nor to formulate, determine or implement management policies to an extent sufficient to exclude Austin from the definition of "municipal employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

Budget Analyst, Accounting Manager, Accountant II, Accountant I, Accountant

The parties stipulated at the outset that the above-listed positions are professional in nature. The District contends that these positions do not have a sufficient community of interest with the unit consisting of certified teacher and related professional employees represented by MTI, and therefore should not be included in said unit; and further, that the position of Accounting Manager (Charles Meyer) is a supervisory position.

The above-listed positions basically involve accounting work. No instructional duties are performed by any of the employees occupying said positions, nor do they have contact with students. The basic function of the Budget Analyst is to prepare monthly reports relating to expenditures within budgetary limitations. In addition, the Budget Analyst accumulates and provides information involving, projected future expenses for the District. The Accountant II is not involved in any instructional process. He is responsible for the handling and accounting of funds for individuals in the instructional process. The Accountant I positions are payroll accountants for the District.

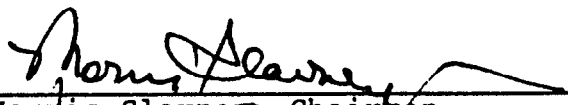

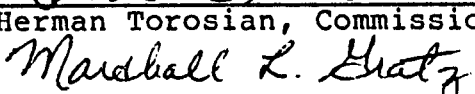
MTI contends that, while the connection between the Accountant and teachers is rather limited, the anti-fragmentation principle of Section 111.70(4)(d)2.a. overcomes the apparent lack of community of interest between said positions and the professional employees having contact with students. It should be noted that the same statutory provision permits the Commission to establish separate units consisting of separate professions. The occupants of said positions have unique interests and aspirations, as well as duties, which are not related to the interests, aspirations and duties of professional employees having contact with students, and therefore we conclude that, in this proceeding, said positions are excluded from the unit of certified teachers and related professional employees.

The District contends that the position of Accounting Manager, presently held by Charles Meyer, is a supervisor within the meaning of Section 111.70(1)(o)1 of MERA, which defines a supervisor as "any individual who has authority in the interest of the municipal employer, to hire, transfer, suspend, layoff, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively recommend such action if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment." Meyer supervises directly the Account Technician and three Accounting Clerks. Meyer exercises his independent judgment in a variety of ways, including yearly evaluations of the work performance, the direction of work to the Accounting Clerks, the authority to terminate Accounting Clerks during the probationary period, has substantial input into the hiring process, and is involved in the first step for grievance resolution. We therefore conclude that the position of Accounting Manager is a supervisory position within the meaning of the Municipal Employment

Relations Act, and that therefore said position is appropriately excluded from any and all bargaining units consisting of employes of the District.

Dated at Madison, Wisconsin this 31st day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman  
  
Herman Torosian, Commissioner  
  
Marshall L. Gratz, Commissioner