

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

WISCONSIN COUNCIL OF COUNTY AND :  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO :

Involving Certain Employes of :

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

Case VIII

No. 20174 ME-1293

Decision No. 14993

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Appearances:

Mr. Richard W. Abelson, Representative, AFSCME, Council 40,  
appearing on behalf of the Petitioner.

Mr. Stanton L. Luker, Business Representative, OPEIU Local 9,  
appearing on behalf of the Intervenor.

Mulcahy and Wherry, Attorneys at Law, by Mr. John T. Coughlin,  
appearing on behalf of the Employer.

DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, Council 40, AFL-CIO, hereinafter referred to as the Petitioner, having, on February 17, 1976, 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 employes of Kenosha Vocational, Technical and Adult Education District No. 6 (Gateway Technical Institute), to determine whether said employes 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 28, 1976, Ellen J. Henningsen, Hearing Officer, being present; and during the course of the hearing Office and Professional Employees International Union Local 9, AFL-CIO, having been permitted to intervene in the matter on the basis of its claim that it presently represents certain of the employes involved herein; and the Commission, having considered the evidence and being fully advised in the premises, being satisfied that a question has arisen concerning representation of said employes of said Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission, within sixty (60) days from the date of this Direction, in the collective bargaining unit consisting of all regular full-time and regular part-time clerical employes in the employ of Kenosha Vocational, Technical and Adult Education District No. 6 (Gateway Technical Institute), but excluding supervisory, managerial and confidential employes, who were employed on October 21, 1976, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employes desire to be represented by Wisconsin Council of County and Municipal Employees,

No. 14993

AFSCME, Council 40, AFL-CIO 1/ for the purposes of collective bargaining with Kenosha Vocational, Technical and Adult Education District No. 6 (Gateway Technical Institute).

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of October, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Charles D. Hoornstra  
Charles D. Hoornstra, Commissioner

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- 1/ Should the Intervenor wish to appear on the ballot, it should so notify the Commission, as well as the Petitioner and Employer, within ten days from the date of this Directive.

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

During the course of the hearing, issues arose as to the appropriate bargaining unit and the inclusion therein of certain individuals occupying alleged confidential positions.

APPROPRIATE UNIT

The Employer, a public education institution, operates three campuses in Racine, Kenosha and Elkhorn, as well as out-reach centers in Kenosha, Racine and Delavan and an office located in Burlington. It employs fifty-four full-time clerical personnel,--eighteen at the Racine campus, two at the Elkhorn campus, one at the Burlington office and thirty-three at the Kenosha campus,--and a number of part-time clerical personnel. Clericals are employed at all locations. Except for the clericals who work at the Racine campus, the clericals are not presently represented for purposes of collective bargaining.

The Intervenor is the certified collective bargaining representative of "all secretaries and office clerical employees employed twenty (20) hours per week or more" on the Racine campus. 2/ When the Intervenor was certified in 1969, the Racine campus was operated by Racine Technical Institute, a separate municipal employer. In 1971 several vocational systems, including the Racine Technical Institute, merged to form the instant Employer.

The Petitioner and the Intervenor contend that the appropriate unit should consist of only regular full-time and regular part-time clerical employees employed at the Kenosha and Elkhorn campuses. Both Petitioner and Intervenor argue that if a District-wide unit is established by the commission, the Intervenor's long-standing and successful bargaining relationship with the Employer will be eliminated. The Petitioner argues that the bargaining history involving other units of employees is supportive of its position, as there are two custodial bargaining units,--one at the Racine campus, and the second at the combined campuses at Kenosha and Elkhorn. The Petitioner also notes that wages and benefits, specifically the pay schedule and the work week, are not the same for the clericals at the Racine campus and at the Kenosha and Elkhorn campuses. The Petitioner indicated that it desires an election in whatever unit is established by the Commission.

The Intervenor contends that the collective bargaining agreement between the Employer and Intervenor, in effect at the time of the filing of petition, should act as a bar to a representation election among Racine clericals. Said collective bargaining agreement expired on August 31, 1976. The Intervenor did not indicate whether it desired to appear on the ballot should the Commission determine that the appropriate unit includes the Racine campus. However, it moved the Commission to direct a separate vote among Racine clericals to determine whether they desired to be included in a District-wide unit.

The Employer contends that the appropriate unit includes all regular full-time and regular part-time clerical employees of the entire District, contending such a unit would conform to the statutory policy of avoiding fragmentation of bargaining units, and that such factors as common supervision, centralized personnel policies, uniform

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2/ Board of Area Vocational, Technical and Adult Education District  
No. 7 (9188) 9/69.

wages and fringe benefits, functional integration of operations, employee interchange and the commonality of employee skills, functions and classifications is supportive of its position.

The Employer is divided into five divisions: Administrative Services, Community Services, Instructional Services, Student Services and Research and Planning. Administrative Services is responsible for issuing the payroll, acts as the personnel office for clerical and custodial employees, and is responsible for the maintenance and construction needs of the system. Community Services provides non-credit course offerings to the public, while Instructional Services administers the degree and diploma programs. Student Services serves as an admissions and placement office, as well as providing other services for students. The purpose of Research and Planning is as the name indicates. Clericals are employed in all five divisions. Except for Administrative Services, each division is headed by an Assistant Director who reports to the Director's office. Each division, except for Administrative Services, employs a Supervisor who, reports to the Assistant Director of the particular division. The division of Administrative Services is headed by the Administrator who reports directly to the Director's office; there is no Assistant Director or Supervisor. Numerous Coordinators are employed in Community Services and Instructional Services and report to the respective Supervisors of the two divisions. Each Coordinator oversees the curriculums and staff in a particular education area, such as Health, Business Education and Trade and Industry.

The clericals are paid from the same payroll, administered by Administrative Services. Although the campuses are geographically separated clericals who regularly work on one campus are often temporarily assigned to another campus. Three clericals, who once worked at the Racine campus have been permanently assigned to work at the Kenosha campus, and continue to be represented by the Intervenor and were covered by the collective bargaining agreement which expired on August 21, 1976. One of the three works in the Division of Research and Planning in Racine one day a week and in Kenosha four days a week. Although the jobs, functions and skills of the clericals may vary according to the particular division in which they work, their jobs, functions and skills do not vary due to geographic location. Therefore, the jobs, functions and skills of some clericals in one location are similar to those of clericals in other locations.

All full-time clericals receive substantially similar fringe benefits, although the vacation policy may differ. Part-time clericals do not receive fringe benefits. Except for the one clerical, who is employed at Burlington, the clericals who work at the non-campus locations are part-time. Clericals at the Kenosha and Elkhorn campuses work forty hours a week, while clericals on the Racine campus work thirty-seven hours a week. The clericals at the Racine campus have different salary ranges than those at the other two campuses.

Personnel functions, excluding hiring and firing, applicable to all clerical employees are performed by the Administrator of Administrative Services and/or the Business Manager, both of whom are located in Kenosha in the Division of Administrative Services. The posting of clerical job vacancies is district-wide. A clerical vacancy cannot be filled on the basis of a campus posting alone.

The Commission concludes, because of the centralized management, integrated functions, employee interchange and similarity of duties and skills, that the appropriate bargaining unit consists of all regular full-time and all regular part-time clerical employees in the entire District. The Commission has already determined that a District-wide unit of instructional personnel is appropriate. Kenosha Vocational, Technical and Adult Education District No. 6 (Gateway Technical Institute)

(14381) 3/76. Although there are presently two custodial units, neither unit was certified by the Commission. In determining that a District-wide unit is appropriate, the Commission has been guided by the statutory directive, expressed in Section 111.70(4)(d)2a of the Municipal Employment Relations Act, which provides that:

"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." \* \* \* [emphasis added]

In the instant case, the statutory directive to avoid fragmentation and the appropriateness of a District-wide unit outweigh the claimed disruption to the bargaining relationship between the Employer and the Intervenor.

The Commission is denying the Intervenor's motion to direct a vote among Racine clericals to determine their wishes concerning a composition of the unit. While sec. 111.70(4)(d)2a., Stats., 3/ permits the commission in its discretion to hold such a vote, the bargaining history on the Racine campus has not created such a distinctive community of interest there as to warrant a departure from the legislature's policy to avoid fragmentation where possible. Accordingly, the commission will not conduct such an election. 4/ To permit the Racine clericals to determine that they do not desire to be included in a District-wide unit might cause undue fragmentation.

#### CONTRACT BAR

The Commission also concludes that the collective bargaining agreement between the Employer and the Intervenor is not a bar to the holding of an election among the Employer's clerical personnel, since said agreement expired prior to the issuance of this Directive.

#### VOTER ELIGIBILITY

The Employer and the Petitioner agreed that Donna Mlodzik, Marilyn Clark, Marilyn Mattareese and Mary Rice, all employed at the Kenosha campus, are confidential employees and therefore should be excluded from the unit. 5/ The Petitioner and the Employer were unable to agree as to the inclusion in or exclusion from the unit of Linda Rende, Debra Jones, Joyce Mueller, Jill Parker, Carol Scholy, Cynthia Sexauer, Patricia Smith and Francine Voit. The Employer contended that these individuals were confidential employees while the Petitioner contended otherwise.

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3/ "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."

\* 4/ See also County of Milwaukee (12571-B) 6/76 (Dane Co. Cir. Ct.)

5/ The Employer and the Petitioner also agreed that the Constance Sharp, who works in Racine, is a confidential employee. However, as the Intervenor did not concur, no stipulation has occurred concerning Sharp's status. Since no testimony was adduced concerning her duties, the Commission makes no ruling on her eligibility and should she appear to vote, her ballot will be challenged by the Commission's agent conducting the balloting should the Intervenor participate in the election.

In order for an employee to be considered a confidential employee, and thereby excluded from the bargaining unit, the Commission has held that such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. 6/ The use of an employee for confidential work when other confidential employees are available 7/ access to personnel and payroll records 8/ the occasional assignment of confidential duties 9/ or a de minimus amount of time spent on confidential matters 10/ are not grounds for concluding that employees involved therein should be excluded from the unit as confidential employees.

Linda Rende holds the position of Finance Clerk and works at the Kenosha campus for the Business Manager and the Administrator of Administrative Services. The Employer contends that Rende is a confidential employee because she has access to payroll and personnel files and because of her involvement in preparing cost analysis of potential Employer bargaining proposals. Rende's primary responsibility is the preparation and processing of the payroll for all personnel and the distribution of their paychecks. In said function, she has access to the financial records of all personnel, including job evaluations, which affect compensation. As part of her payroll responsibilities, she prepares retirement reports, reconciles bank statements, and informs Coordinators of the percentage of their respective budgets that have been spent. She also maintains personnel files. Individual employees have the right to examine the contents of their files. Concerning her involvement in the preparation of bargaining proposals, Rende testified that if she had ever prepared such information, she was not aware of it.

The Commission concludes that Rende is not a confidential employee; access to personnel and payroll records and the compellation of information which aides the Employer in formulating bargaining positions, without the employee's knowledge of the resulting positions, are not sufficient reasons to exclude an employee from a unit. 11/

Debra Jones works as a clerk-typist for the Supervisor of Student Services, and as such performs a variety of clerical functions. In addition to routine matters, she types the final draft of answers to grievances filed with the Supervisor and the final draft of job evaluations and reprimands of the counselors and of the three to four clericals that the Supervisor directs. Answers, evaluations and reprimands are available to the particular employee involved.

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6/ City of Menasha (14523) 4/76; Juneau County (Pleasant Acres Infirmary) (12814) 5/74; Watertown Unified School District No. 1 (12166-A) 3/74.

7/ Cudahy Board of Education (12087) 8/73; Sheboygan Board of Education (10488) 8/71.

8/ City of Menasha, above note 6; Juneau County (Pleasant Acres Infirmary) above note 6; Menomonee Falls Joint School District No. 1 (11669) 3/73.

9/ Marshfield Joint School District No. 1 (14575) 4/76.

10/ Eau Claire Public Library (10789) 2/72; Sheboygan Board of Education, above note 7.

11/ The task of costing out proposals had previously been performed by the Business Manager; the Deputy Director testified that Rende had recently been assigned that function. At the time of the hearing, the bargaining season had not begun. The Commission concludes that Rende is not a confidential employee based on her duties at the time of the hearing. However, if her future duties require that she be excluded from the unit, the parties can either agree to her exclusion or petition the Commission for a unit clarification.

Jones is not involved in any internal discussion concerning the appropriate answer to a grievance. On one occasion, Jones typed the Supervisor's response to the Assistant Director who had disagreed with an evaluation that the Supervisor had drafted. This disagreement was not revealed to the subject of the evaluation.

The Commission is satisfied that Jones is not a confidential employe as she does not have knowledge of confidential matters pertaining to labor relations. The information she types on answers, evaluations and reprimands is not confidential. Moreover, the single instance when she was involved with a confidential matter occupied a de minimus amount of her time.

The six remaining individuals work as Secretaries to six of the seven Coordinators in the division of Instructional Services. Each Coordinator supervises the teachers and clericals in their respective educational areas. One of the six Coordinators is always a member of the Employer's bargaining team during negotiations with the teacher-counselor labor organization. When not on the team, each Coordinator may suggest bargaining proposals, usually in written form, and might also serve as a resource person concerning the effect of an organization proposal. Joyce Mueller works for the Coordinator of Business Education; Jill Parker works for the Coordinator of Agri-Business; Carol Scholy works for the Coordinator of Trade and Industry; Cynthia Sexauer works for the Coordinator of Health Occupations; Patricia Smith works for the Coordinator of Home Economics and Francine Voit works for the Coordinator of General Education. The Coordinator of Instructional Resources, the seventh Coordinator, does not deal with course offerings. 12/

The Employer contends that the six Secretaries are confidential employes because of their access to the personnel files of teachers, their typing of evaluations, reprimands and answers to grievances, as well as confidential matters pertaining to negotiations with the teacher-counselor labor organization.

As part of their routine clerical duties, the six Secretaries have access to teacher's personnel files, which are available to the individual teacher. In addition, the Secretaries type final drafts of evaluations and reprimands of teachers and clericals and of answers to grievances filed by the teacher-counselor organization. Copies of these documents are distributed to the employe involved. If the Coordinator who sits on the Employer's bargaining team is chosen as the recording secretary, that Coordinator's Secretary transcribes the Coordinator's notes of joint negotiating sessions with the teacher-counselor organization and of closed Employer caucuses. Francine Voit, Secretary to the Coordinator of General Education, testified that she had performed this particular function once during her four years working in this position. If a Secretary's supervisor is on the bargaining team, that Secretary might also type the Coordinator's memos concerning negotiations. If a Coordinator chooses to offer bargaining suggestions to the Deputy Director, the individual who heads the Employer's bargaining team, that Coordinator's Secretary would type those suggestions. Similarly, if a Coordinator is asked to comment upon the impact of a bargaining proposal on his or her particular area, that Coordinator's Secretary would type the response.

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12/ In its brief, the Union claims that the two positions of Secretary to the Coordinators of Agri-Business and Home Economics were abolished in July of 1976.

✓ The nature and frequency of the duties performed by the above secretaries does not require that they be excluded from the unit. Access to personnel files and knowledge of nonconfidential information concerning labor relations does not confer confidential status on an employee. The Secretaries' duties in regard to negotiations occur infrequently and occupy a minimal amount of their time. Moreover, other clerical employees are readily available to perform these duties. Marilyn Mattareese, Secretary to both the Assistant Director and the Supervisor of Community Services, and one of the clericals agreed upon by the Petitioner and to be a confidential employee, is presently transcribing the negotiating session minutes. The Deputy Director's secretary deemed to be confidential by the Petitioner and Employer, is also available to perform this duty, as well as the duty of typing bargaining proposals. The Employer can utilize these confidential employees, as well as Mary Rice, the Secretary to the Assistant Director and the Supervisor of Instructional Services, agreed by the Petitioner and Employer to be confidential, to perform the occasional confidential duties performed by said six secretaries.

Dated at Madison, Wisconsin this 21<sup>st</sup> day of October, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
Morris Slavney, Chairman

Norman Torosian  
Norman Torosian, Commissioner

Charles D. Hoornstra  
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