

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
MILWAUKEE DISTRICT COUNCIL 48,	:	
AFSCME, AFL-CIO, and its	:	
affiliated LOCAL 80	:	Case 26
	:	No. 36465 ME-67
	:	Decision No. 16405-A
Involving Certain Employees of	:	
	:	
WEST ALLIS-WEST MILWAUKEE	:	
SCHOOL DISTRICT	:	
	:	

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law, Suite 315, 207 East Michigan Street, Milwaukee, WI 53202, by Mr. Alvin R. Ugent, appearing on behalf of the Union.

Foley & Lardner, Attorneys at Law, Suite 3800, 777 East Wisconsin Avenue, Milwaukee, WI 53202-5367, by Mr. Herbert P. Wiedemann, appearing on behalf of the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

District Council 48, AFSCME, AFL-CIO, and its affiliated Local 80, having on January 31, 1986 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employes of the West Allis-West Milwaukee School District; and hearing in the matter having been conducted on May 12, 1986, at West Allis, Wisconsin before Examiner Raleigh Jones, a member of the Commission's staff; and a transcript of the proceeding having been received on June 12, 1986; and the parties having filed briefs by July 22, 1986; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That District Council 48, AFSCME, AFL-CIO, and its affiliated Local 80, hereinafter referred to as the Union, is a labor organization and has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

2. That West Allis-West Milwaukee School District, hereinafter referred to as the District, is a municipal employer and has its offices at 9333 West Lincoln Avenue, West Allis, Wisconsin 53227.

3. That in the petition initiating the instant proceeding, District Council 48, AFSCME, AFL-CIO, and its affiliated Local 80, sought an election to determine whether the employes in the following alleged appropriate bargaining unit desired to be represented by it for the purposes of collective bargaining:

All unrepresented full time and part time employes (including instructors, housekeepers and grounds crew), and excluding supervisors, managerial and confidential employes.

4. That at the hearing herein, the parties agreed that a representation election should be conducted in the following voting group:

All regular full time employes in the recreation department, excluding recreation supervisor, recreation programmer, records clerk and all supervisors, managerial employes, professional employes and part time and seasonal employes;

and that the parties agreed that the sole issue herein is whether the recreation department employes should constitute a separate bargaining unit.

5. That the District contends the recreation department employees should constitute a separate bargaining unit while the Union is opposed to the creation of such a bargaining unit; and that the Union proposes adding the recreation department employees to the existing custodial bargaining unit after a vote.

6. That at the present time there are four separate collective bargaining units of District employees:

<u>Unit</u>	<u>No. in Unit</u>	<u>Representative</u>
1. Teachers	541	West Allis-West Milwaukee Education Association
2. Teacher Aides	52	West Allis-West Milwaukee Education Association
3. Clericals	57	District Council 48, AFSCME, AFL-CIO, and its affiliated Local 80
4. Custodial-Maintenance	125	District Council 48, AFSCME, AFL-CIO, and its affiliated Local 80

7. That the function of the recreation department is to provide leisure services such as athletic activities to the residents of the District; that the agreed-upon voting group referred to in Finding of Fact 4 includes 10 recreational instructors and 3 support employees (the recreation employee, recreation housekeeper and recreation groundskeeper) and excludes approximately 150-300 other employees such as referees or officials who work on either a part-time or seasonal basis; that the recreational instructors implement and supervise a year-round recreation program of athletics, arts and crafts, social activities and fine arts for students and adults; that the instructors work at the District's schools, playgrounds and fieldhouses; that the recreation instructor job description indicates they hire with supervisor's approval, evaluate (verbally) and schedule the part-time employees; that said job description also indicates the recreation instructors need "training and experience in recreation, physical education, public personnel administration or a related field" and some college training, preferably a college degree; that the instructors are accountable for the checking accounts of boys and girls club programs; that instructors report to the recreation supervisor and recreational programmer who in turn report to the recreation director; that the only contact the instructors normally have with custodial-maintenance employees in the course of their work is when the instructors need something fixed; that recreation employee Marie Peterson runs the arts and crafts program at the Washington Fieldhouse; that recreation housekeeper Audrey Herder works at Franklin Fieldhouse; that Dawn Nardi is the groundskeeper for the recreation department; that the recreation instructors and recreation housekeeper Herder are paid on a salary basis while recreation employee Peterson and recreation groundskeeper Nardi are paid on an hourly basis; that the instructors and recreation employee Peterson work Saturdays in the fall, winter and spring while the recreation housekeeper and recreation groundskeeper work Monday-Friday; and that recreation department employees and custodial-maintenance employees have identical fringe benefits in the following areas: health and life insurance, holidays, and sick, funeral, maternity and emergency leave.

8. That the custodial-maintenance employees clean and provide maintenance to the District's school buildings and fieldhouses; that all employees in the custodial-maintenance bargaining unit are paid on an hourly basis and do not normally work on Saturdays; that custodians perform some overtime work in connection with the District's recreational activities; that custodial-maintenance employees report to the supervisor of maintenance and the coordinator of operations and maintenance who in turn report to the director of business services; that employees in the custodial-maintenance bargaining unit do not have responsibility to hire employees; that the 19 head custodians are responsible for completing a probationary report on employees who have completed a six month probationary period but do not evaluate after this probationary report is completed; that the head custodians are responsible for scheduling the custodians and cleaners; that head

custodians fill out supply requests and initiate work orders; that employes in the custodian-maintenance bargaining unit do not lead clubs, supervise or provide activities, or coordinate leagues, parties or field trips; that employes in the custodial-maintenance bargaining unit do not have budget responsibility, organize and/or work at special all-city events, or maintain attendance, accident or field trip reports with respect to program participants; and that groundskeeper Ken Harmeyer works in both the District's maintenance and recreation departments but is included in the custodial-maintenance bargaining unit.

9. That in view of the difference between the number of employes in the custodial-maintenance bargaining unit and the number of employes in the recreation department, the dissimilar job functions and the instructors' education/training requirements noted in Finding of Fact 7, above, between the two groups, and with the exception of the groundskeeper, the fact that these employes do not share common supervision with employes in the custodial-maintenance bargaining unit, the recreation department employes share a sufficient community of interest unto themselves to justify the conclusion that a bargaining unit of such employes is an appropriate bargaining unit; and that the establishment of such a bargaining unit will not cause undue fragmentation of bargaining units of employes employed by the District.

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

CONCLUSIONS OF LAW

1. That all regular full-time employes in the recreation department, excluding recreation supervisor, recreation programmer, records clerk and all supervisors, managerial employes, professional employes and part-time and seasonal employes, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That a question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., presently exists among the employes of the West Allis-West Milwaukee School District in the appropriate collective bargaining unit described in Conclusion of Law 1 above.

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

DIRECTION OF ELECTION

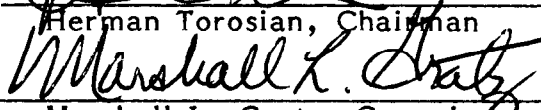
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within the forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time employes in the recreation department, excluding recreation supervisor, recreation programmer, records clerk and all supervisors, managerial employes, professional employes and part-time and seasonal employes who were employed by the West Allis-West Milwaukee School District on August 22, 1986, except such employes as may, prior to election, quit their employment or be discharged for cause, for the purposes of determining whether a majority of said employes voting desire to be represented by District Council 48, AFSCME, AFL-CIO, and its affiliated Local 80, for the purposes of collective bargaining with the West Allis-West Milwaukee School District on wages, hours and conditions of employment, or whether such employes desire not to be so represented by said labor organization.


Given under our hands and seal at the City of
Madison, Wisconsin this 22nd day of August, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

WEST ALLIS-WEST MILWAUKEE SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Position of the Parties

The parties agree that an election should be conducted in the voting group described in Finding of Fact 4. The Union proposes that this recreation department group should then be made a part of the existing custodial unit. The Union opposes a separate bargaining unit for the recreation department employes on the grounds this would constitute fragmentation and would be exactly what is strongly discouraged by MERA. According to the Union, the community of interest between the recreational employes and the custodial-maintenance bargaining unit is obvious.

The District maintains that the only appropriate bargaining unit in this case is a separate unit consisting of the recreation department employes. According to the District, this case should be determined by comparing the recreation instructors (which make up 77% of the group the Union seeks to represent) and the custodial-maintenance employes. It argues the instructors have almost no commonality of interest with the custodial-maintenance employes.

Discussion

The Commission is mindful that Section 111.70(4)(d)2.a. of MERA provides that fragmentation of bargaining units should be avoided "by maintaining as few units as practicable in keeping with the size of the total municipal work force." That provision, however, also states that "the Commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions, or other occupational groupings constitute a unit." Taken together, these two requirements in effect dictate that a balance must be struck between the number of bargaining units on the one hand, and the need for ensuring that the unique interests and aspirations of a given group of employes will not be subordinated to the interests of another bargaining group. It is for that reason that the Commission looks to the facts of a given case to determine the appropriateness of a particular bargaining unit. 1/

Two of the recreation department support employes (namely the recreation housekeeper and recreation groundskeeper) have job titles and presumably job duties that are comparable to those performed by the custodial-maintenance employes. However, the fact that these two employes have similar titles and duties to the custodians does not mean the recreation department employes as a whole have a community of interest with the custodians. Since three-fourths of the agreed-upon voting group consists of recreation instructors, it is necessary to determine whether this recreation department group shares a community of interest with the custodians. We conclude that the instructors possess different skills and usually perform different duties than the custodial-maintenance employes. For instance, no one in the custodial-maintenance bargaining unit performs a job function remotely similar to that performed by the instructors. The instructors also are required to have the training/experience noted in Finding of Fact 7. Moreover, there is no common supervision between the instructors and the custodial-maintenance employes below the level of superintendent. While custodians work at the same physical locations (i.e. schools and fieldhouses) as the instructors, so do many other District employes.

The Commission is satisfied that after balancing the various factors to be taken into consideration in determining appropriate units, 2/ the differences

1/ Joint School District No. 2, City of Sun Prairie, Dec. No. 20459 (WERC, 3/83).

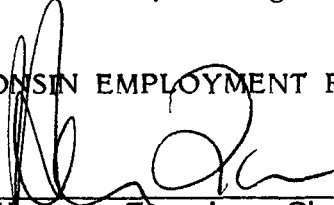
2/ Milwaukee County, Dec. No. 19753-A (WERC, 2/83); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

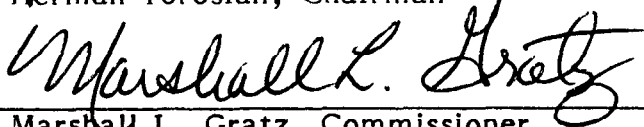
between the instructors' job functions and the custodial-maintenance employes are sufficient to warrant establishing a recreation department unit.


Dated at Madison, Wisconsin this 22nd day of August, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner