

Note concerning PDF filename 16405-A.pdf --

Two files bearing the same 16405-A decision number exist in the WERC hard copy archives.

Both of those documents have been combined into the single 16405-A.pdf document for electronic archiving purposes.

M. Gratz  
11-20-03



STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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 employees 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 employees 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 employees (including instructors, housekeepers and grounds crew), and excluding supervisors, managerial and confidential employees.

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 employees in the recreation department, excluding recreation supervisor, recreation programmer, records clerk and all supervisors, managerial employees, professional employees and part time and seasonal employees;

and that the parties agreed that the sole issue herein is whether the recreation department employees 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 employees in the custodian-maintenance bargaining unit do not lead clubs, supervise or provide activities, or coordinate leagues, parties or field trips; that employees 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 employees in the custodial-maintenance bargaining unit and the number of employees 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 employees do not share common supervision with employees in the custodial-maintenance bargaining unit, the recreation department employees share a sufficient community of interest unto themselves to justify the conclusion that a bargaining unit of such employees is an appropriate bargaining unit; and that the establishment of such a bargaining unit will not cause undue fragmentation of bargaining units of employees 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 employees in the recreation department, excluding recreation supervisor, recreation programmer, records clerk and all supervisors, managerial employees, professional employees and part-time and seasonal employees, 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 employees 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

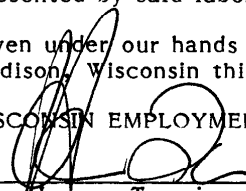
#### DIRECTION OF ELECTION


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 employees in the recreation department, excluding recreation supervisor, recreation programmer, records clerk and all supervisors, managerial employees, professional employees and part-time and seasonal employees who were employed by the West Allis-West Milwaukee School District on August 22, 1986, except such employees as may, prior to election, quit their employment or be discharged for cause, for the purposes of determining whether a majority of said employees 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 employees desire not to be so represented by said labor organization.

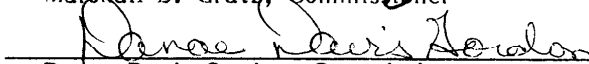
Given under our hands and seal at the City of  
Madison, Wisconsin this 22nd day of August, 1986.

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 employees 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 employees 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 employees. 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 employees. It argues the instructors have almost no commonality of interest with the custodial-maintenance employees.

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 employees 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 employees 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 employees (namely the recreation housekeeper and recreation groundskeeper) have job titles and presumably job duties that are comparable to those performed by the custodial-maintenance employees. However, the fact that these two employees have similar titles and duties to the custodians does not mean the recreation department employees 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 employees. 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 employees 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 employees.

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).

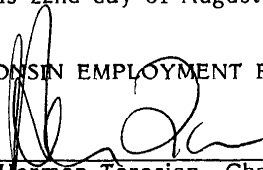
2/ Milwaukee County, Dec. No. 19753-A (WERC, 2/83); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

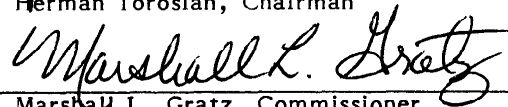
between the instructors' job functions and the custodial-maintenance employees are sufficient to warrant establishing a recreation department unit.


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

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

- - - - -  
In the Matter of the Petition of :  
MILWAUKEE DISTRICT COUNCIL 48 :  
and its affiliated LOCAL 80 :  
AFSCME, AFL-CIO : Case 60  
Involving Certain Employees of : No. 40739 ME-270  
WEST ALLIS - WEST MILWAUKEE : Decision No. 16405-A  
SCHOOL DISTRICT :  
- - - - -

Appearances:  
Podell, Ugent & Cross, S.C., Attorneys at Law, Suite 315, 207 East Michigan Street, Milwaukee, WI 53202, by Ms. Nola J. Hitchcock Cross, appearing on behalf of the Union.  
Ms. Sandy Schwelling, West Suburban Council, 4620 West North Avenue, Milwaukee, WI 53208, appearing on behalf of the Association.  
Foley & Lardner, Attorneys at Law, Suite 3800, 777 East Wisconsin Avenue, Milwaukee, WI 53202-5367, by Mr. Herbert P. Weidemann, appearing on behalf of the District.

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

On June 14, 1988, Milwaukee District Council 48 and its affiliated Local 80, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission, requesting the clarification of a bargaining unit of municipal employees of the School District of West Allis - West Milwaukee, et al. Hearings in the matter were held on October 6, November 14, and December 9, 1988, in West Allis, Wisconsin, before Robert M. McCormick, a member of the Commission's staff, at which time the West Allis - West Milwaukee Education Association was permitted to intervene in the proceedings. Briefs were exchanged on January 27, 1989, and no further written arguments were submitted prior to the close of the record on February 14, 1989. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. The Milwaukee District Council 48 and its affiliated Local 80, AFSCME, AFL-CIO, hereafter AFSCME or the Petitioner, is a labor organization with offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.
2. The West Allis - West Milwaukee Education Association, hereafter the Association or the Intervenor, is a labor organization with offices at 4620 West North Avenue, Milwaukee, Wisconsin.
3. The School District of West Allis - West Milwaukee, hereafter the District, is a municipal employer with offices at 9333 West Lincoln Avenue, West Allis, Wisconsin.
4. AFSCME is the exclusive collective bargaining representative for three units of municipal employees of the District, such units consisting of "all custodial and maintenance employees, truck drivers, storekeepers and cleaners, except for supervisors and confidential employees," hereafter the custodial/ maintenance unit; "all regular full and part-time clerical and secretarial employees of the Board, excluding confidential, managerial, and supervisory employees," hereafter the clerical unit; and certain regular full-time employees  
No. 16405-A  
of the recreation department. As of the date of this proceeding, there were 122 members of the custodial/maintenance unit, 67 members of the clerical unit, and 12 members of the recreation department unit.
5. The Association is the exclusive collective bargaining representative for two units of municipal employees of the District, such units consisting of "all regular certified teachers (including helping and reading teachers, special education teachers, physical and occupational therapists, and teachers on leaves of absence), psychologists, social workers and counselors, and guidance counselors excluding substitute teachers, recreation supervisors, vice-principals, principals, supervisors, elementary consultant, director of business services, superintendent of schools and all other employees and administrators," hereafter the teacher unit; and "all Teacher Aides, Orthopedic Matrons and Instructional Aides, including all Library Aides employed in the

middle and elementary schools but excluding all clerical employees employed in the high school libraries," hereafter the teacher aides unit. As of the date of this proceeding, there were 638 members in the teacher unit and 66 members in the teacher aide unit.

6. The District employs three Audio-Visual Technical Specialists, who are currently the only regular full-time or regular part-time District municipal employes who are not represented for the purposes of collective bargaining. The position description for the A/V Technical Specialists, which accurately reflects the duties they perform, reads as follows:

SCHOOL DISTRICT OF WEST ALLIS-WEST MILWAUKEE, ET AL.

March 4, 1988

P L E A S E      P O S T

The following position is vacant:

SCHOOL AUDIO-VISUAL TECHNICAL SPECIALIST

The position of Audio-Visual Technical Specialist is a 12-month position of a paraprofessional nature. The person employed in this position should have a minimum of an Associate Degree (two-year) or its equivalent in a related technical field. Preferably, the person should be experienced in several areas of audio-visual services.

The Audio-Visual Technical Specialist in this position will function as a member of the West Milwaukee High School IMC staff part of the morning, and provide technical service at Parkway the remaining part of the day and on non student days.

The building responsibility will include, but not limited to, the following:

work with building staff to set up audio-visual  
and computer equipment for instructional  
purposes.

The district responsibility will include, but not limited to, the following duties:

1. working with administrative personnel  
to building and district media  
programs.
2. selecting equipment and supplies in  
the area of audio-visual services.
3. participating on technical  
committees.



4. repair and maintenance of audio-visual equipment.
5. repair and maintenance of computers and other related hardware.
6. video and audio production as well as production of visual materials such as transparencies, dry mounting, laminating, and other related audio-visual processes.
7. operation, set-up and maintenance of micro-computers.
8. maintenance record keeping.
9. ordering and inventorying supplies needed for audio, video and computer services.

An Audio-Visual Technical Specialist will be responsible to the building Library Media Specialist, the building Principal when working in the building, and the district Library Media Specialist for district responsibility

Starting salary - \$17,800

Personnel interested in applying for this position are asked to make application in writing to the Director of Personnel, 9333 W. Lincoln Avenue, West Allis, WI 53227, as soon as possible. Application should include desire for the position and qualifications.

7. There is a supplemental job description for the A/V Technician assigned to the West Milwaukee High School, which reads as follows:

AUDIOVISUAL TECHNICIAN-JOB DESCRIPTION  
WEST MILWAUKEE HIGH SCHOOL

It should be stressed that this position would more properly be named "Audiovisual Technician and Library Support Personnel" to indicate that the position entails more than audiovisual and technical duties. The position also includes duties that would be more traditionally associated with the library. The primary duties of the person in this position are Audiovisual related, but the secondary duties, which should not be ignored, are related more closely to the library.

Job Expectations:

(these include, but are not limited to)

Attend faculty meetings when possible.

Deliver equipment to classrooms on a daily basis.

Start an A/V Club. This would include training students to use a video camera; proper hook-up and adjustments for the VCRs; filmstrip and film projector operation; etc.

Videotape classes and special events or arrange for a student to do so.

In conjunction with the librarian put out a periodic newsletter to faculty and administrators. This should include suggestions of services that can be performed since the last newsletter.

Come up with a list of services that can be performed. These services could be listed and explained in one of the above mentioned newsletters. Devise a request for services form that would incorporate the services and a reply.

Put out a monthly report on statistics of audiovisual usage.

In conjunction with the librarian plan and present lessons on using audiovisuals to classes. (i.e. a lesson on incorporating the use of overheads in speeches, or how to come across effectively on camera when being videotaped)

Help students in the IMC when they need assistance.

Check A/V kits in the IMC for missing materials.

Assist with computers.

Help with the yearly inventory.

8. Raphael Qualls, Dennis Gorzek and Richard Scholl are employed by the District as A/V Technical Specialists. Qualls, who is assigned four and one-half days per week to Nathan Hale High School, where he has an office, and one-half day per week to the Instructional Media Center (IMC) at Parkway, holds a Bachelor of Science degree in Communications from the University of Wisconsin Oshkosh. Gorzek, who is assigned four-and-one-half days per week to Central High and one-half day per week to the IMC at Parkway, holds an Associate Degree in professional photography from the Layton School of Art, has senior status at the School of Fine Arts, UW-Milwaukee, and is currently enrolled at the UW-Green Bay. He has taken professional courses from a variety of sources, dealing with photography and television production and management. His professional experience includes running his own multi-media production company, seven years service as director of photography and film editor for an advertising agency, and four years as a news cameraman for a Milwaukee television station. Scholl, who is assigned two and one-half hours per day to West Milwaukee, where he shares an office with the librarian and library clerk, and the remainder to the Parkway IMC, has attended the University of Wisconsin - Stevens Point, where he is approximately 15-20 credits short of a graduation (in Forestry and Computer Science). His other education includes a correspondence course from Capital Radio Engineering Institute, and one semester from Ohio Dominican College (in Television Production) and one semester at the Milwaukee School of Engineering. Their respective dates of hire were September 1, 1987 (Qualls), August, 1985 (Gorzek) and April, 1988 (Scholl). The District hired its first employee for audiovisual activities in 1981, under the position title of media resources facilitator. The District regarded this position, filled by former elementary school principal Henry Clausen, to be administrative. The facilitator was succeeded by an audiovisual specialist, hired from the outside, Michael Borsinger, who assumed both Clausen's former duties at the Parkway IMC and new duties at West Milwaukee. Gorzek was the first full audiovisual specialist assigned to Central; prior to his hire in 1985, this work was performed by an audiovisual coordinator, Ed Steck, a member of the teacher bargaining unit. Steck performed these duties as part of his teaching contract. John Ewing was the first audiovisual specialist hired for Hale; prior to Ewing, these duties had been performed by Gordon Martinsen, as part of his contract as a member of the teacher bargaining unit. While an outgrowth of the former position, the skills and duties of the A/V technical specialists are more technical (i.e., requiring greater expertise in such fields as camera work and art) than those of the coordinator or facilitator.

9. In addition to the duties outlined in Findings of Fact 6 and 7, the individual technicians have their duties concentrated as follows: Gorzek's primary duty is to make sure that equipment needed for audiovisual purposes is in the necessary location, and in good working condition. He provides supervision to students using the A/V rooms, including maintaining order and reporting absences. He occasionally gives classroom instruction in the proper use of media, and makes a presentation to freshman regarding the IMC, activities which require him to prepare his own lesson plans. He serves as executive producer on video tape productions, has produced calendars and annual reports for the District, and prepared a display booth for an educational exposition. He and Qualls are the only non-faculty or guidance personnel involved in the Student Assistance Program. He offered a photography seminar for faculty members. He helps students with the use of computers, preparation of a computer-generated newsletter for Spanish class, and videotape productions of the Talented and Gifted section. He attends approximately 60% of the faculty meetings. Scholl's top priority is the transport and set-up of A/V equipment, with repair and maintenance second priority. He has wired a network for a computer system; taught students and teachers in the proper use of computer programs; assisted the Director of Library Media in the selection of new equipment; and occasionally attended faculty meetings. Qualls spends about 40% of his time in the duplication of computer disks, transparencies, slides and laminations; about 20% in the transport and set-up of equipment; and the rest of his time performing varied duties, such as the organization and

running of an A/V club, instructing students and teachers in the proper use of equipment, videotaping school programs, arranging for equipment repair, compiling monthly reports on equipment use and maintenance, and troubleshooting equipment, and that such miscellaneous duties each take up between one and five per-cent of his time.

10. The wages, hours and conditions of employment for the various units are as follows:

A. Teachers: A work-year that runs from the last week of August to the first week in June, during which time they have 180 teaching days, four inservice or preparation days, two convention days and four holidays. Their salary schedule, which is indexed, starts at \$17,900 for a beginning teacher with a bachelor's degree, and extends to \$38,411 for a 12-year teacher with a masters plus 30 credits, supplemented by longevity stipends after 15, 20 and 25 years continuous local experience. Provisions are made for early retirement. The employer pays the full cost of group life insurance, dental insurance, long-term disability insurance, approximately three months of insurance continuation, and health insurance (after a six month probationary period, subject to certain precertification review), and, in lieu of health insurance, a contribution to a tax-sheltered annuity equal to the full cost of the premium for individual health insurance. Teachers are not required to reside in the District.

B. Teacher aides: A ten-month work-year, with three paid holidays, with a six-hour workday as the minimum level for full-time employes. Pursuant to the salary schedule effective July 1, 1989, there are five classifications, each with eight steps, ranging from \$5.60 per hour (starting level for student supervision aides and library aides) to \$8.90 (top rate for exceptional education aide III). After six months tenure, the aides receive full payment for the health insurance premiums (subject to certain refunds for failure to comply with certification procedures). They receive fully-paid long-term disability and dental insurance; the employer makes a 6% contribution to their retirement; they may take one day emergency leave (subject to approval), paid leave for certain official appearances, one day personal leave (subject to review) and funeral leave of one to three days. Teacher aides are required to reside in the District.

C. Custodial/Maintenance: A 12-month work year, with time-and-one-half paid for all hours worked outside the normal work hours or in excess of 40 hours per week; vacation time is earned two weeks after one year, three weeks after nine years, four weeks after 17 years, and five weeks after 23 years; after a six month probationary period, the District pays 95% of the premium for health insurance, with employes hired prior to December 31, 1984 or with more than seven years service having their premiums paid in full; dental insurance, long term disability, and, after the probationary period, life insurance are all paid in full by the District; sick leave is accumulated twelve days per year, to a maximum of 150 days; there are ten holidays per year, ten of which are used as such and five credited as vacation; in lieu of insurance, employes may receive a tax sheltered annuity, at 50% of the applicable rate (\$64.42 for single, \$169.40 for family); the District pays both the employer and employe share of contribution into the retirement fund; and the five-step salary structure effective July 1, 1987 featured top rates as follows: Cleaner, \$7.01; Custodian I, \$11.67; Storekeeper, \$11.69; Custodian II, \$12.24; Custodian III, \$13.10; Custodian IV, \$13.59; Painter, \$13.73; Custodian Leadperson, \$13.84; Carpenter, Machinist, et al, \$14.38; and Electrician/ Plumber, \$15.35. Custodial/maintenance employes are required to reside in the District.

D. Clericals/Secretaries: They have hours and conditions of employment substantially identical to those of the blue collar employes; their wage scale, effective July 1, 1988, is a six-classification, seven-step schedule ranging from \$7.43 (Step 1, Class VI) to \$11.34 (Step 7, Class I). Clerical/secretarial employes are required to reside in the District.

E. A/V Technical Specialists: The health/medical insurance program is defined as "the same program as offered to the professional staff," with the District

paying the full amount after six months; similarly, the dental and long term disability provisions are described as the "professional staff program," with the District paying full amount. A tax sheltered annuity is offered upon the employee's execution of a waiver of health/medical insurance, with the District contributing an amount equal to "the amount of a single pay health premium cost." Sick leave accrues 12 days per year, to a maximum accumulation of 150 days. Vacation is earned two weeks after one year of service, three weeks after three years, and four weeks after 15 years. Ten holidays are provided for, three of them being half-days. There are provisions for emergency leave (one day paid), snow emergency days (the technicians are to report if schools are closed for snow emergency, or they will not be paid), funeral leave (one to three days, "depending on need,"), and retirement (District contributes both employer and employee share). The salary for this year-round position starts at \$17,800 for a six month probationary period, and then follows a ten-step schedule, with increments of .04%, ranging from \$18,512 to \$24,920. A/V Technical Specialists are not required to live in the District.

11. Supervision of the various unit employees is as follows:

A. Teachers, teacher aides and clericals are supervised by the principal of the building to which they are assigned. The principal reports to Superintendent of Schools Sam Castagna.

B. Librarians (members of the Teacher unit), library clerks (members of the secretarial unit, and assigned only to elementary schools), library aides (members of the Teacher Aide unit, and assigned only to the high schools), and the A/V Technical Specialists, are supervised by both their building principal and by Dennis Allmon, Library Media Specialist. Allmon reports to the Director of Instructional Services, Mr. Ervin Yanke, who reports to Superintendent Castagna.

C. Custodial/maintenance employees report both to the principal of the building where they are assigned and to the Coordinator of Operations and Maintenance (Mr. Ronald Harvancik, assisted by the Supervisor of Maintenance,

Mr. George Borski), who reports to the Director of Business Services (Mr. Richard Scott), who reports to Superintendent Castagna.

12. On August 22, 1986, the Commission issued an order directing an election in a collective bargaining unit consisting of all regular full-time employees in the recreation department, excluding recreation supervisor, recreation programmer, records clerk and all supervisors, managerial employees, professional employees and part-time and seasonal employees employed by the District as of that date, excluding those who, prior to the date of election, quit or were discharged for cause. In its Findings of Fact relative to such Direction, the Commission found as follows:

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.

13. The position of A/V Technician Specialist does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized study in an institution of higher education.

14. In view of the differences between the A/V Technician Specialists and other non-professional employees regarding duties, skills, wages, hours and conditions of employment, their occasional interaction and sharing of a workplace and supervision with other non-professional employees does not establish a community of interest sufficient to warrant inclusion of the A/V Technical Specialists into any existing bargaining unit.

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

CONCLUSIONS OF LAW

1. That the occupants of the position of A/V Technician Specialist are not professional employees within the meaning of Sec. 111.70(1)(L), Stats.

2. That a bargaining unit consisting of all regular full-time and regular part-time non-professional employees of the West Allis - West Milwaukee School District not currently or appropriately included in an existing bargaining unit excluding supervisory, confidential and managerial employees is appropriate for the purposes of collective bargaining under Sec. 111.70(4)(d)2.a., Stats.

3. That a question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., currently exists among employees of the West Allis - West Milwaukee, School District in the appropriate bargaining unit set forth in Conclusion of Law 2.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DIRECTION OF ELECTION

IT IS HEREBY ORDERED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in the following bargaining unit:

All regular full-time and regular part-time non-professional employees of the West Allis - West Milwaukee School District not currently or appropriately included in an existing bargaining unit excluding supervisory, confidential and managerial employees, who are employed on September 6, 1989 except such employees as may prior to the election quit or be discharged for cause, for the purposes of determining whether a majority of the employees in said voting group desire to be represented for the purposes of collective bargaining with the District by Wisconsin Council 48 and its affiliated Local 80, AFSCME, AFL-CIO, or by the West Allis - West Milwaukee Education Association, or to be unrepresented.

Given under our hands and seal at the City of  
Madison, Wisconsin this 6th day of September,  
1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

\_\_\_\_\_  
Herman Torosian, Commissioner

\_\_\_\_\_  
William K. Strycker, Commissioner

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

POSITIONS OF THE PARTIES

In its petition, the Union sought accretion of the three subject positions into the Local 80 blue collar unit (custodial, maintenance, et al). At hearing, the Union proposed that, in the alternative, the positions be accreted into either the white collar (clerical and administrative) or recreation department units. The Association has proposed accretion of the positions into either its professional unit or, in the alternative, its non-professional aides unit. The District submits that the petition should be dismissed, as the positions constitute a separate residual unit whose representation should be determined via election rather than unit clarification. In the alternative, the District proposes that the positions should be accreted to the teacher unit, but only pursuant to an election. Finally, the District posits that there should be no bargaining representation for the positions unless the incumbents themselves vote for such.

The Union

In support of its position, the Union asserts and avers as follows:

The subject positions and the employees in Local 80 share a similarity of wages, hours and conditions of employment, in that they receive the same holidays, have identical vacation schedules, both of which are distinctly different from that of the Association members, and the same sick leave and life insurance. They all are eligible for hourly overtime (unlike the teachers), have payroll periods different from the other employees, and, unlike the school-year based Association members, work year-round.

The subject positions and the employees in Local 80 share a similarity of duties, in that the A/V technicians arrange with Local 80 employees for the transportation and modification of certain equipment; the A/V technicians regularly interact with Local 80 employees by making requisitions, questioning them about building equipment, or responding to inquiries; and at least one A/V technician carries a two-way radio set at the same frequency as the custodial and maintenance employees.

The subject positions have common supervision with Union members, in that their supervisor also supervises librarians and a secretary who is represented by Local 80.

There is a great deal of interaction between the subject positions and the Local 80 clerical employees, especially regarding the operations and programming of computers. And both groups have in common that they work directly with student and teachers a great deal.

In support of its position, the Association asserts and avers as follows:

Measured against the statutory criteria, the A/V technicians are properly classified as "professional" employees. That the work they perform is predominantly intellectual and varied in character is established both by their written job descriptions and their actual duties (e.g., working with administrative personnel to support media programs, participating in technical committees, creating multi-media productions, planning and presenting lessons, working with students). That their duties involve the exercise of discretion and judgment on a regular basis is established by testimony showing that their duties are not subject to rote or standardization. That their position requires advanced knowledge acquired by a prolonged course of specialized intellectual instruction - a standard the Commission has previously held does not mandate a full college degree -- is established by assessing the education and experience, in conjunction, of the three incumbents, in that all three meet the posted standard for "desireable training and experience," namely an Associate Degree or its equivalent in a related technical field.

As professionals, the subject positions share a greater community of interest with the teachers than with other groups and therefore should be included within their bargaining group. The subject positions perform tasks previously performed by teachers; the technicians' supervisor believes these positions are, based on duties and skills, most like teachers; these employees have either university degrees and/or extensive training, levels more similar to members of the teacher unit than other groups; their supervisor also supervises other members of the teacher unit, the librarians; they have offices in the school libraries, thus working in the same general area as other teacher unit members (the librarians); their constant interaction with students and other teachers is similar to that of teachers; and accretion into the teacher unit will not result in undue fragmentation.

In the event the Commission determines these positions are not professional, the technicians should be accreted into the unit of teacher aides, the unit with whom they share the next greatest community of interest. Both groups spend the majority of their time working with teachers and students.

In support of its position, the District asserts and avers as follows:

Because they constitute a separate, residual unit, the subject positions are not appropriately added to any other unit. The A/V specialists have interests and aspirations even more unique than the members of the Recreation Department, who were certified as a separate unit by the Commission in 1986. Also, compared to the other two Union units, they have distinct and different job function, training, experience, and supervision. Moreover, there is no record that any individual has transferred between a Union unit and the position of A/V specialist; there are significant differences in benefits (e.g., insurance, holidays, vacations) provided the subject positions and the Union units; and the residency requirements applicable to the Union employees are not applied to the subject positions.

If accretion to any unit were permissible, the appropriate unit would be the teacher unit, in that the subject personnel are directly involved in the education process, and their duties were formerly performed by administrative and teaching personnel. The examiner's bench ruling notwithstanding, Sec. 111.70(4)(d)2.a, Wis. Stats., does not prevent the Commission from permitting accretion of the non-professional A/V specialists to the professional teacher unit, subject to vote by the teachers.



Finally, given their separate and distinct interests, it is inappropriate to accrete the subject positions to any existing unit without an affirmative vote by the A/V specialists in a Commission-conducted election.

## DISCUSSION

### Professional Status

Before we can determine the appropriate unit, if any, for the positions in question, we must first determine whether or not the A/V technicians are professional employees. For the reasons explained below, we have found that they are not.

Section 111.70(1)(L), Stats., defines the term "professional employe" as follows:

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 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.

While the contents of a job description may be relevant as to the nature of the work performed and the qualifications and experience desired/required to do the work, job descriptions in and of themselves are not dispositive. Rather, we look not only to the written job descriptions, but also to any other evidence of the actual duties and responsibilities and knowledge and skill required for the position. 1/

Based on the duties and responsibilities of the subject positions, we have no hesitancy in determining that the A/V technicians satisfy the first three tests of professional status, 1.a. - c. Specifically, we find that these standards are met by such duties as the organization and leadership of the A/V club, the responsibility for audio and video production work (both independently and involving students), and the instruction of both faculty and students in the proper use of computers and A/V equipment. A much closer call comes, however, in assessing how the subject positions measure against the fourth standard, concerning educational criteria.

---

1/ Outagamie County, Dec. No. 21143-A, (WERC, 10/86).

Understanding that these determinations are made on a case-by-case basis, it may be helpful, for purposes of comparison, to review previous Commission determinations dealing with this topic.

In Rock County, Dec. No. 13670-A (WERC, 10/75), we held as non-professional a Radiological Technician who was required to have successfully completed formal radiologic technology training in an AMA-approved school, successfully pass the National X-Ray Technician Examination, be eligible or possess a license from the State of Wisconsin, and have the ability to meet the requirements for registry by the American Registry of Radiologic Technologists, obtainable through a two-year course of study in a school affiliated with a general hospital or through a vocation school. Such requirements, we held, did not satisfy the criteria for a "prolonged course of study as envisioned by the statutory definition" of professional employee.

In Dane County, Dec. No. 10492-D (WERC, 4/85), we held as non-professional the position of Specification Coordinator, Purchasing Division, the posted requirements for which included, "any combination equivalent to graduation from college with a degree in business or public administration or a related field, and two years experience in the purchasing of services and supplies for a government agency." Therein, while giving great weight to the fact that the incumbent did not himself possess a college degree, and to testimony establishing that the County's actual requirement was for the described degree or its equivalent in experience and training, we also held that the stated educational demand "refer(red) only to . . . rather broad and general fields," rather than the statutory "course of specialized intellectual instruction."

In City of Sun Prairie, Dec. No. 20841-B (WERC, 10/86), we held as professional a Senior Engineering Technician who did not hold a bachelor's degree and who occupied a position for which the City's hiring criterion was two years towards a specialized associate degree rather than the four years or more generally associated with a college degree in engineering. Noting that we had previously held that the statutory definition does not limit professional status only to those possessing specialized bachelor's degrees, we were persuaded that the responsibilities of the position -- the review and approval of various design drawings, coordination of field services, inspections, surveys, administration and enforcement of various rules and regulations, etc. -- were the type which required knowledge of the sort customarily acquired in an engineering degree program.

In City of Cudahy, Dec. No. 19507 (WERC, 3/82), we held as professional two positions occupied by incumbents who did not possess college degrees. We found professional a Data Processing Analyst who spent the majority of her time performing the following duties: (a) implementing and operating an IBM System 34 computer; (b) writing programs utilizing RPG program language; (c) insuring that the computer system's software and hardware are operating properly; (d) performing basic accounting work, journal and ledger entries, and (e) training employees in the use of equipment and in program operation. We noted that the City preferred that the Analyst have a college degree, with two or more years of modern accounting theory and practice; that the incumbent was scheduled to receive a degree in Management shortly after the hearing, and that the incumbent had taken courses in data processing as well as having received training from IBM in the use and operation of the City's computer. The "skills and knowledge necessary to perform the problem solving duties . . . in addition to the actual training and experience possessed by the incumbent," we concluded, were sufficient to convince us of the position's professional status.

In that same case, we also held to be professional an Engineering Technician II who had one year of college training in civil engineering. We found that the position -- which functioned almost exclusively as a land surveyor, a post for which practitioners "typically possess an engineering degree" -- was one which required "knowledge of an advanced type customarily acquired through formal higher education" (emphasis in original).

Measuring the subject position in light of the foregoing, we find that it does not meet the standard established by Sec. 111.70(1)(L)1.d., Stats.

The question before us is not whether an Associate Degree, in the abstract, can ever constitute the required "prolonged course of specialized intellectual instruction and study in an institution of higher education." For, as we have held, the absence of an advanced degree is not an insurmountable bar to qualification for professional status. Rather, the question is, does the work of the A/V Technical Specialist require knowledge of an advanced type customarily acquired through such formal higher education. On the record before us, measured against the standards set in the decisions discussed herein, we find that it does not. The work of these audiovisual technicians is certainly more intellectually demanding than that required for "routine mental, manual or physical" processes. However, even including the special work with students, it is not work which requires knowledge of an advanced type customarily acquired through a prolonged course of specialized intellectual instruction in an institution of higher learning.

#### Appropriate Unit

Having determined that the employees in question are not professionals and thus cannot be included in the Association's professional unit through a unit clarification process, 2/ we turn to the question of whether we should direct an election in a separate residual unit or whether we should add the employees to one of the existing non-professional units through a unit clarification process.

Residual units have historically been found to be appropriate by the Commission for several reasons. Residual units, of course, consist of all unrepresented employees of a municipal employer; thus, the statutory interest in avoiding further fragmentation of bargaining units is served since the existence of a residual unit assures the municipal employer that it will not be confronted with any additional units in the future. 3/ In addition, stability in existing bargaining relationships between the municipal employer and existing labor organizations is maintained when a residual unit is established. 4/ As we are satisfied that the residual unit proposed by the District herein is appropriate because it serves the interests recited above and because an election in such a unit will allow the employees in question to freely opt for representation by AFSCME, the Association, or none at all, we are strongly inclined to reach that result unless there is a compelling reason to place them in an existing unit through the unit clarification process.

Placement in an existing unit through the unit clarification process would clearly be warranted if the A/V positions fell within the confines of an existing unit description. Thus, for instance, if there were a single existing overall unit consisting of nonprofessional District employees, we would simply include the A/V positions within that unit. Obviously, no such unit is present here and none of the existing unit descriptions can reasonably be interpreted to include A/V positions.

Placement in one of the existing units could also be warranted if the record demonstrated a compelling community of interest between the A/V employees and those employees in an existing unit. 5/ As our Findings indicate, no such factor is present here. The A/V employees have duties, skills, wages, hours and

---

2/ If the positions were "professional", they would appropriately be included in the one existing broad professional unit represented by the Association.

3/ Once a residual unit is established, thereafter all new positions are either placed in said unit or in existing units, as appropriate, assuming the continuing majority status of the union is not implicated so as to require an election.

4/ City of Watertown, Dec. No. 24798 (WERC, 8/87). In addition, such a result is consistent with the distinctions in wages, hours and conditions of employment between the three A/V employees and those employees in the larger existing units.

5/ See Dane County, Dec. No. 15696-A (WERC, 12/88).

conditions of employment which are substantially distinct from all other employees. Therefore, placement in an existing unit is not warranted under such a rationale either.

Given the foregoing, we are satisfied that direction of an election in a residual unit is appropriate.

At hearing, AFSCME and the Association indicated a desire to participate in a representation election, should one be directed. Accordingly, we have directed an election wherein the employees can choose between the two labor organizations and no representation.

Dated at Madison, Wisconsin this 6th day of September, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

\_\_\_\_\_  
Herman Torosian, Commissioner

\_\_\_\_\_  
William K. Strycker, Commissioner