



Wisconsin, which employs approximately 1,300 full-time and 1,200 part-time professional and non-professional employees.

4. That at all times material herein Petitioner-WFT has been and is the collective bargaining representative of employees of the District in a unit consisting of professional employees; that Petitioner-AFSCME at all times material herein has been and is the collective bargaining representative of clerical and related employees employed by the District, and that Petitioner-WFT and Petitioner-AFSCME, are the joint representatives of a bargaining unit consisting of paraprofessionals in the employ of the District.

5. That Petitioner-WFT, in its petition, requested the Commission to conduct an election among "all employees of student services and health services and student services specialists, educational service assistants, administrative assistants, and guidance counselor-generalists; but excluding clerks, student services coordinators and managerial, supervisory and confidential employees, and all other employees"; that 57 employees are included in such requested bargaining unit; that said employees (a) primarily work in one division but also work in other departments; (b) primarily perform work in the nature of student guidance, but also perform medical functions; (c) receive wages and benefits which differ substantially, depending upon whether they are professional or paraprofessional; and (d) lack a substantial community of interest.

6. That following the conduct of the hearing herein, held on June 15, 1978, the parties executed a stipulation wherein they conditionally requested the Commission to conduct separate elections among three separate voting groups involving said 57 employees contingent on the question of whether the unit described in paragraph 5 is an appropriate unit for collective bargaining; that said voting groups are herein generally described as follows:

Voting Group No. I - Paraprofessionals to determine whether they desire to be included in the collective bargaining unit of paraprofessionals now jointly represented by both Petitioners.

Voting Group No. II - Clerical and related employees to determine whether they desire to be included in the unit presently represented by Petitioner-AFSCME.

Voting Group No. III - Professional employees to determine whether they desire to be included in the collective bargaining unit presently represented by Petitioner-WFT.

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

#### CONCLUSION OF LAW

The unit sought by Petitioner-WFT, set forth in paragraph 5 above, does not constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2a of the Municipal Employment Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

#### ORDER FOR FURTHER HEARING

That hearing in the above-entitled matter be continued on Friday, August 25, 1978, at 9:00 a.m. in Room 328 of the University of Wisconsin-

sin-Extension, Civic Center Campus, 929 North Sixth Street, Milwaukee,  
Wisconsin.

Given under our hands and seal at the  
City of Madison, Wisconsin this *22nd*  
day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Herman Torosian*  
Herman Torosian, Commissioner

*Marshall L. Gratz*  
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION  
OF LAW AND ORDER FOR FURTHER HEARING

The unit alleged to be appropriate by Petitioner-WFT consists essentially of unrepresented employees in the District's employee and student services division, 1/ who loosely may be described as performing student guidance services, 2/ which are supportive of the District's educational program.

Petitioner-AFSCME filed a separate petition for clarification of bargaining unit in which it sought to include certain of the positions, set forth in the unit sought by Petitioner-WFT, in the unit of clerical and other employees currently represented by Petitioner-AFSCME. 3/ Both Petitioner-AFSCME and the District contend that the unit sought by Petitioner-WFT is inappropriate.

As indicated in the Findings of Fact, following the initial day of hearing, the parties executed a stipulation requesting the Commission to conduct an election among employees involved in a petition filed by Petitioner-WFT to determine whether said employees, in three voting groups, desire to be included in the three existing collective bargaining units. Issues remain with respect to the placement of certain of the employees involved in the various voting groups, and further as to whether various individuals involved occupy managerial, supervisory or confidential positions.

DISCUSSION

We deem it appropriate to make a determination of the appropriate unit issue in order to avoid the delays caused by a technical dismissal and/or protracted hearing. Section 111.70(4)(d)2a of MERA provides as follows:

"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, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless

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- 1/ The alleged appropriate unit includes 10 employees in other departments.
  - 2/ Four employees in health services perform medical functions in support of the educational program, which cannot properly be characterized as student guidance.
  - 3/ Said petition was consolidated with the petition filed by WFT for the purpose of hearing.

a majority of the craft employees vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot."

In Dane County (10492-A) 3/72 @ p. 10 we stated:

"The recently enacted MERA recognizes that there is a need for a pattern of bargaining units which permits employees the right to be represented in workable units by organizations of their own choosing, which may be reasonably expected to be concerned with the unique interests and aspirations of the employees in said units. To establish a unit wherein the interests of a large group of employees are likely to be submerged would not, in our opinion, give adequate protection to the rights guaranteed to employees in the Act. However, units cannot be so fragmentized so as to be inadequate for viable collective bargaining."

While the sought unit consists of persons providing services in support of the educational program, very broadly termed "guidance", 4/ the performance of these duties does not alone given the petitioned-for unit a community of interest. Other factors demonstrate a lack of substantial community of interest. First, the alleged appropriate unit consists of both professionals and non-professionals. 5/ Generally, the employees involved herein who the District deem to be professional, have traditionally received wages and benefits similar to those of professional educators in the unit now represented by Petitioner-WFT, while those it deems non-professional have traditionally received wages and benefits similar to those of employees in the unit now represented by Petitioner-AFSCME. There is little or no progression from non-professional to professional positions. Secondly, the alleged appropriate unit crosses both departmental lines and broad occupational grouping lines.

In light of the small size of the sought unit as compared to the total size of the District's work force, the lack of community of interest, and the existing pattern of District wide units, we conclude that the unit sought by Petitioner-WFT is inappropriate. The stipulation executed by the parties after the hearing conforms to the Commission's anti-fragmentation policy. However, although the stipulation of the parties so conforms, further hearing is necessary to determine the placement of the positions in the appropriate voting groups, and further to determine whether any of the employees involved occupy managerial, supervisor or confidential positions.

Dated at Madison, Wisconsin this, 22nd day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Marshall L. Gratz  
Marshall L. Gratz, Commissioner

4/ Except health services employees.

5/ In fact, it has been our policy to include professionals performing services in support of the educational program in the unit of professional education employees. Furthermore, professionals may not be included with non-professionals without a vote among the professionals.