

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
LODI ASSOCIATE STAFF ORGANIZATION : Case IV  
Involving Certain Employees of : No. 22244 ME-1491  
LODI JOINT SCHOOL DISTRICT NO. 1 : Decision No. 16667  
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Appearances:

Wisconsin Education Association Council, by Mr. Michael L. Stoll,  
Staff Counsel, appearing on behalf of the Petitioner.  
Mulcahy & Wherry, Attorneys at Law, by Mr. John T. Coughlin,  
appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Lodi Associate Staff Organization, having filed a petition on November 15, 1977, with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to the provisions of the Municipal Employment Relations Act among certain employees of Lodi Joint School District No. 1; and a hearing in the matter having been held on March 14 and 16, 1978, at Madison, Wisconsin, before Duane McCrary, Examiner. Following the distribution of a transcript and submission of post-hearing briefs, the Commission having considered the evidence, and being satisfied that questions concerning the appropriate bargaining unit and representation have arisen involving certain employees of the Municipal Employer named above, makes and issues the following

FINDINGS OF FACT

1. That the Lodi Associate Staff Organization, hereinafter referred to as the Union, is a labor organization and has its offices at Lodi, Wisconsin.
2. That the Lodi Joint School District No. 1, hereinafter referred to as the District, having its offices at Lodi, Wisconsin, operates a school system, wherein it provides educational services to primary and secondary students in three schools, namely, the Dane Elementary School (grades kindergarten through two), the Lodi Elementary School (grades kindergarten through six), and the Lodi Junior/Senior High School (grades seven through twelve); and that the District employs, among others, eight secretarial-clerical employees, eleven custodial-maintenance employees, nineteen food service personnel, and twelve teachers aides.
3. That in its petition initiating the instant proceeding the Union contended that the appropriate bargaining unit, in which it desires the Commission to conduct a representation election, should consist of only the non-supervisory custodial and maintenance employees; and that throughout the hearing herein the District has contended that the appropriate bargaining unit should consist of all non-professional employees of the District, excluding confidential, supervisory and managerial employees, or in the alternative, two units, consisting of (1) custodial-maintenance, and food service employees, and (2) secretarial-clerical, and teachers aides.
4. That the District, for the past number of years, has recognized and engaged in collective bargaining with an organization representing

non-supervisory and non-managerial certified teaching personnel in the employ of the District; that no organization has been recognized by the District as the collective bargaining representative for any other employees of the District; that, however, for the past number of years, members of the District's Board have negotiated separately with each of the remaining four groups of employees noted in para. 2, supra, with respect to wages, fringe benefits, hours and working conditions affecting each of said separate groups; that in the spring of 1977, after meeting separately with the employees in the food service, secretarial-clerical, and teachers aides groups, the District's Board and the employees in each of said latter groups reached separate accords, by group, with respect to wages, fringe benefits, hours and working conditions to be in effect for each of said groups of employees for the school year 1977-78; and that the terms of said accords were reflected in individual contracts of employment with each employee, and, where applicable, in a document entitled "School District of Lodi Non-Teaching Employment Policies - 1977-1978."

5. That also in the second semester of the 1976-1977 school year members of the District's Board and its Administrator met with the custodial and maintenance employees in efforts to reach an accord on wages, fringe benefits, hours and working conditions covering said employees for the school year 1977-1978; that in said regard meetings were held on February 24, March 3, 10 and 17, April 28, and May 27, 1977; that an accord was reached on guaranteed overtime per week, insurance, days of sick leave, personal leave, retirement, and other matters, which were reflected in the document entitled "School District of Lodi Non-Teaching Employment Policies - 1977-1978"; that however, no accord was reached on wages; and that on dates in June, 1977 the custodial and maintenance employees executed individual contracts of employment, which contained among other things, hourly rates unilaterally implemented by the District.

6. That the custodial and maintenance employees (a) perform duties separate and distinct from the duties performed by the remaining non-professional employees of the District, (b) work 12 months of the year on various shifts, 1/ unlike other employees, and (c) as 12 month employees receive certain fringe benefits not received by other non-professional employees, e.g., annual paid vacation, 12 days sick leave, two days personal leave, two hours per week guaranteed overtime; and that the Building Principals are the primary supervisors of all non-professional employees, with the exception of the food service employees, who are under the supervision of the School Lunch Manager and Business Manager.

7. That during the course of the hearing the District, contrary to the Union, contended that the Junior/Senior High School custodian positions, occupied by Lavern Millard, and that the Custodian I position at the Lodi Elementary School, occupied by Louis Munz, are supervisory and/or managerial employees; and that the following individuals are employed as custodial and maintenance personnel at the schools noted:

<u>Junior/Senior High School</u>		<u>Lodi Elementary School</u>	
LaVern Millard	(7:00 am - 3:30 pm)	Louis Munz	(7:30 am - 3:30 pm)
Lois Bittner	(3:30 pm - 12:00 am)	Edward Muzatko	(9:00 am - 5:30 pm)
John McDunn	(3:30 pm - 12:00 am)	Arthur Wahlers	(2:00 pm - 10:30 pm)
Norman Neumaier	(7:00 am - 3:30 pm)	<u>Dane Elementary School</u>	
		Francis Hyatt <u>2/</u>	

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1/ The custodian at Dane Elementary School is not a 12 month employee.

John Ganser CETA Funded) 2/

Robert McFarland (CETA Funded) 2/

8. That LaVern Millard, who as of the date of the hearing herein, had been employed by the District as a custodial employe for approximately three and one-half years; that on August 22, 1977 Millard was designated as the Junior/Senior High custodian to replace a former occupant of said position; that Millard spends approximately 95% of his time performing custodial and maintenance duties identical to the duties performed by the remaining custodians at the Junior/Senior High School; that the remainder of his time is spent in checking time sheets of other custodians, ordering supplies in minor amounts, arranging for part-time employes to replace regular employes who are absent for short periods of time, and maintaining a record of expenditures for materials and supplies; that Millard has not interviewed applicants for employment, nor has he evaluated employes; and that Millard participated, as a member of the custodial group, in five of the bargaining sessions described in para. 5, supra.

9. That Louis Munz, who holds the classification of Custodian I at the Lodi Elementary School, spends the vast majority of his time in maintaing and repairing the heating system, and in performing routine custodial and maintenance duties; that, like Millard, he orders small amounts of materials and supplies; that Munz does not evaluate employes; that however, on one occasion, Munz participated, along with the School Principal, in interviewing three applicants for a vacant custodial position, and made a recommendation as to the individual hired; and that Munz participated, along with other custodians, in three of the bargaining sessions described in para. 5, supra.

10. That also during the course of the hearing the District contended that the CETA funded custodians, Ganser and McFarland, should not be eligible to vote in any election directed by the Commission, since, at least as of the date of the hearing, funding of said positions for the coming school year was in doubt.

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 and regular part-time custodial and maintenance employes in the employ of Lodi Joint School District No. 1 constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

2. That since LaVern Millard and Louis Munz are not clothed with sufficient duties and responsibility to constitute said individuals as supervisors and/or managerial personnel, said individuals are "municipal employes" within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

3. That regular full-time and regular part-time CETA-Funded custodial and maintenance employes presently employed are eligible to vote in the election directed herein unless it is clear that funding for said position will expire on or before December 31, 1978.

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2/ Shift hours not established in the record. However, one of the CETA positions works from 2:30 p.m. to 11:00 p.m., and the other CETA position works from 3:30 p.m. to 12:00 a.m.

NOW, THEREFORE, it is

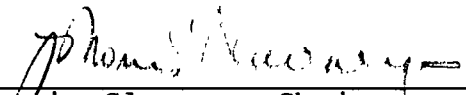
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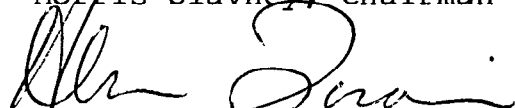
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission in the collective bargaining unit consisting of all regular full-time and regular part-time custodial and maintenance employees in the employ of Lodi Joint School District No. 1, excluding managerial, supervisory and confidential employees, who were employed November 15, 1978, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees casting valid ballots desire to be represented by the Lodi Associate Staff Organization for the purposes of collective bargaining with the Lodi Joint School District No. 1 with respect to wages, hours and conditions of employment.

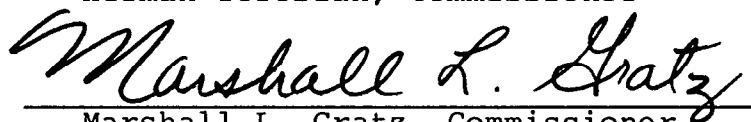
Given under our hands and seal at the  
City of Madison, Wisconsin this 15th  
day of November, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Union seeks an election in a separate unit consisting of all regular full-time and regular part-time custodial and maintenance employees to determine whether said employees desire to be represented by the Union for the purposes of collective bargaining. The District contends that the unit sought by the Union is not an appropriate bargaining unit. The District claims that the appropriate bargaining unit consists of all non-professional employees in the District excluding confidential, supervisory and managerial employees. In the alternative, the District contends that should the Commission find a smaller unit to be appropriate, then the unit should consist of custodial-maintenance and food service employees. Issues also have arisen as a result of the District's claim that certain individuals are supervisory and/or managerial.

The Appropriate Unit

In determining whether the unit sought by the Union is an appropriate unit, the Commission must consider Section 111.70(4)(d)2.a. of MERA, which provides as follows:

"The Commission shall determine the appropriate 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 determination, the Commission may decide whether, in a particular case, the employees in the same of several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit."

In applying the above statutory criteria in establishing appropriate bargaining units, the Commission has considered the following factors: 3/

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with duties and skills of other employees.
3. The similarity of wages, hours and working conditions of the employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common work place with the employees in said desired unit or whether they share the work place with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

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3/ See Kenosha Unified School District No. 1, (13431), 3/75; Hartford Union High School, (15745) 8/77; Madison Joint School Dist. No. 8, (14814-A) 12/76.

The record establishes that the custodial and maintenance employees share a community of interest separate and apart from other employees. They exercise skills and perform duties which are not performed by other employees. Their wages, hours and working conditions are distinct from the wages, hours and working conditions of other employees. Their supervision is common to the supervision of certain other non-professional employees. They perform and work throughout the school buildings, and the representatives of the District have negotiated separately with the custodial and maintenance employees.

The Findings of Fact set forth the differences in hours, fringes, and working conditions as well as the "negotiating" history. The custodial and maintenance employees, except in the Dane Elementary School, work on three shifts. All the other non-professional employees work single shifts. Further all but one of the custodial-maintenance employees work on a twelve month basis, while the other non-professional employees do not have such a work term.

In establishing wages, hours and working conditions for employees for the 1977-78 school year, the president of the District's Board appointed a committee consisting of two members of the District's Board to negotiate separately with the following four staff groups, consisting of "cooks", "custodians" "secretaries and aides", and "transportation". 4/ In said regard, a Board Committee, as well as the administrator, met and negotiated with the custodial and maintenance employees as a separate group on February 24, March 3, 10 and 13; April 28; and May 27, 1977. Six custodial employees were present at the meeting of February 24; five were present at the meeting of March 3; three were present at the meeting of March 13 and March 17; five were present at the meeting of April 28; and four were present at the meeting of May 27. As a result of such meetings, the District and the custodial and maintenance employees, meeting as a group reached an accord on various matters as set forth in para. 5 of the Findings of Fact. However, no agreement was reached on wages.

Primarily because of the bargaining history, which reflects that the District itself treated its custodial and maintenance employees as a separate group for bargaining purposes -- a division not expressly prohibited under MERA -- we conclude, despite the common supervision of the various groups, that the anti-fragmentation policy is overcome and that the regular full-time and regular part-time custodial and maintenance employees constitute an appropriate collective bargaining unit under MERA.

#### Supervisory Issues:

The District, contrary to the Union, contends that LaVern Millard and Louis Munz are supervisors and therefore should be excluded from the unit. 5/

Section 111.70.(1)(b) of MERA defines the term "supervisory" as follows:

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- 4/ There was no evidence in the record with respect to any transportation employees.
- 5/ During the course of hearing issues were raised with regard to the supervisory status of individuals in other employee groups, and since the Commission found the custodial and maintenance employees to constitute an appropriate unit, the Commission does not deem it necessary to determine said issues herein.

". . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment."

In its interpretation of the above definition, the Commission has on numerous occasions, listed the following factors as those to be considered in the determination of an individual's supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 6/

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employee to be a supervisor. 7/

The duties and responsibilities of Millard and Munz have been set forth in the Findings of Fact. We are satisfied, considering the above noted factors, that such factors are not sufficient in degree nor in combination to warrant a conclusion that said two individuals are supervisors or managerial employees within the meaning of MERA.

The District attempted to establish Millard's supervisory status by eliciting testimony with respect to the duties and responsibilities of John Puckett, who was replaced by Millard. It appears that Puckett, had such responsibility and performed such duties that the Commission may have found him to be a supervisor. However, it is clear from the record that, at least at the time of the hearing, Millard had not been given such responsibilities and duties as had been exercised by Puckett.

CETA Employees:

As noted in the Findings of Fact, the District contended that two CETA custodians should not be included among the eligibles in any unit

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6/ Fond du Lac County, (10579-A) 1/72; St. Croix County (Health Care Center), (14518) 4/76; Wood County, (10345-A).

7/ Wood County, supra.

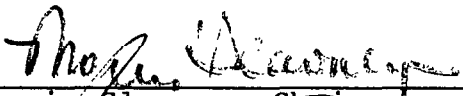
established by the Commission since it was anticipated that the CETA funds for said positions would expire in the near future; and thus, the two individuals so funded have no reasonable expectancy of continued employment.

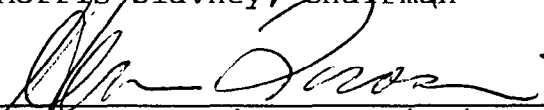
If in fact CETA employes are presently employed in custodial and maintenance positions, such employes shall be deemed eligible to vote unless it is clear that such funding will expire on or before December 31, 1978.

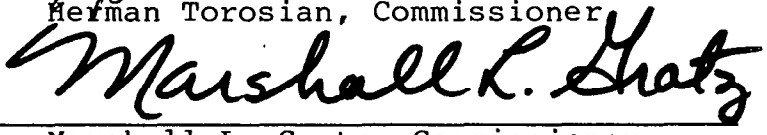
Dated at Madison, Wisconsin this 15th day of November, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner