

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
APPLETON AIDES ASSOCIATION, WEAC  
Involving Certain Employees of  
APPLETON AREA SCHOOL DISTRICT  
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: Case XXXI  
: No. 26486 ME-1866  
: Decision No. 18203  
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Appearances:

Appleton Aides Association, WEAC, by Mr. Richard DeBroux,  
appearing on behalf of the Petitioner.  
Mr. Kenneth Johnston, Director of Administrative Services,  
appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Appleton Aides Association, WEAC, having filed a petition on July 1, 1980, 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 Appleton Area School District; and a hearing in the matter having been held on August 13, 1980 at Appleton, Wisconsin, before Stephen Pieroni, Examiner. At the time of hearing, the parties waived a transcript of the proceedings, and, the Commission, having considered the evidence, and briefs of the parties, and being satisfied that questions concerning the appropriate bargaining unit and representation have arisen involving certain employees of said District, makes and issues the following

FINDINGS OF FACT

1. That Appleton Aides Association, WEAC, hereinafter referred to as the Association, is a labor organization and has its offices at 210 East Hoover Avenue, Appleton, Wisconsin.
2. That Appleton Area School District, hereinafter referred to as the District, operates a K through 12 school district, and has its administrative offices at 120 East Harris Street, Appleton, Wisconsin; that the District employs, among others, 10 Orthopedic Aides who assist orthopedic students in functions which relate directly to the students' physical handicaps, in cooperation with Physical Therapists, classroom Teachers, or in duties outside the classroom proper; that the specific duties for Orthopedic Aides in individual buildings are cooperatively determined by the District administrators or Therapists with who the Orthopedic Aides work; that the Orthopedic Aides work during the full school year in an eight hour day; that said Aides are hourly paid, and effective as of July 1, 1980 their hourly rates range from \$3.40 per hour to \$4.40 per hour; that the District also employs one Orthopedic Cook, the only cook in the employ of the District; that the Orthopedic Cook prepares and serves food exclusively for the use of orthopedic students at the Highlands Elementary School; that the District also employs some 90 Instructional Aides for the purpose of assisting with clerical, supervisory and classroom procedures to relieve instructional and other professional personnel for the more direct duties involved with serving students, and that the specific duties for such Aides are cooperatively determined by District administrators and professional staff members with whom such Aides work;

that the Instructional Aides work during the full school year in a seven hour day; and that the Instructional Aides are also hourly paid, and as of July 1, 1980 their hourly rates range from \$3.35 to \$4.25 per hour.

3. That there are some similarities, as well as differences, with respect to the fringe benefits applicable to Orthopedic and Instructional Aides, reflected as follows:

<u>Benefit</u>	<u>Orthopedic Aides</u>	<u>Instructional Aides</u>
Sick Leave	Earn 1 day per month accumulative to 90 days	Earn 1 day a month-accumulative to 30 days
Emergency Leave	Same	Same
Break Time	None	15 Min. A.M. 10 Min. P.M.
Retirement	Same	Same
Life Insurance	\$6000 premium paid by District for employe employe pays premium for family	None
Health Insurance	Employe premium paid by District-employe pays premium for family	None
Pay Day	1st of each month-12 paydays during year	1st and 15th of of each month-20 checks during year
Absences	Same except for notification. Either the night before prior to 6:30 a.m. of the day of absence	Same except for notification. Either the night before or prior to 7:00 a.m. of the day of absence
Health Examination	same	Same
Notice of Resignation	Same	Same
Continuing Employment	Same	Same

4. That in this proceeding the Association requests the Commission to conduct an election among all regular full-time and regular part-time Instruction and Orthopedic Aides in the employ of the District to determine whether said employees desire to be represented by the Association for the purposes of collective bargaining with the District; that the District, however, contends that Commission should not combine the Orthopedic Aides in the same collective bargaining unit without granting Orthopedic Aides the opportunity to determine for themselves whether they desire to be included in a bargaining unit with the Instructional Aides, on the basis that the Occupational Aides have a separate community of interest and that their conditions of employment vary from the working conditions of the Instructional Aides; and that during the course of the hearing herein the parties agreed that the Orthopedic Cook should be included in any unit which includes the Orthopedic Aides.

5. That there are no other Aides employed by the District; that the Instructional and Orthopedic Aides perform their duties with students and teachers in an educational setting; that there are more similarities

in the wages, hours and working conditions of both groups of said Aides than there are differences; that there is no significant differences in their supervision; and that while their pay rates might differ, such differences result from skills and physical efforts involved in performing their duties.

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 Instructional and Orthopedic Aides, including the Orthopedic Cook, excluding confidential, supervisory and managerial employees, in the employ of the Appleton Area School District 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 a question of representation within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act has arisen among employees of the Appleton Area School District employed in the appropriate collective bargaining unit described 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

It is hereby directed that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time Instructional and Orthopedic Aides, including the Orthopedic Cook, excluding confidential, supervisory and managerial employees in the employ of the Appleton Area School District, who were employed on September 5, 1980 <sup>1/</sup>, 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 Appleton Aides Association, WEAC for the purposes of collective bargaining with the Appleton Area School District, with respect to wages, hours and conditions of employment.

Given under our hands and seal at the  
City of Madison, Wisconsin this 3rd  
day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY Morris Slavney  
Morris Slavney, Chairman  
Herman Torosian  
Herman Torosian, Commissioner  
Gary L. Covelli  
Gary L. Covelli, Commissioner

1/ Eligibility date agreed upon by the parties.

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

In determining an appropriate unit or units 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 a determination, the Commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, craft, 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."

In applying the above statutory criteria the Commission has considered the following factors: 2/

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.

While Section 111.70(4)(d)2.a. authorizes the Commission to provide an opportunity for the employees concerned to determine by secret ballot whether they desire to be established as a separate bargaining unit, this is entirely discretionary with the Commission. The over-riding determinative factor is to "whenever possible avoid fragmentation by maintaining as few units as practical in keeping with the size of the total municipal work force." 3/

2/ See Kenosha Unified School District No. 1, (13431), 3/75; Hartford Union High School, (15745) 8/77; Madison Joint School District No. 8, (14814-A) 12/76; Lodi Joint School District No. 1, (16667), 11/78.

3/ Milwaukee County, Dane Co. Cir. Ct. 6/76 (aff. Commission decision No. 14571, 3/74)

The Commission has interpreted this statutory provision to mean that there is a need for a pattern of bargaining units which permit 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. Therefore, the Commission has the obligation of striking a balance between stability on one hand, and the need for ensuring that the unique interests of a given group of employees will not be subordinated to the interest 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. 4/

Having considered the evidence and arguments of record, the Commission finds insufficient evidence to conclude that the interest of the Orthopedic Aides and the Instructional Aides are irreconcilable. The present situation is not unlike that in which the Commission has established a single unit composed of a large group of truck operator employees and a small group of park maintenance employees. Each of those groups generally work in different locations and are paid at different hourly wage rates. Likewise, there is nothing inherent in the present situation which would prevent the District from negotiating differing hourly rates and conditions of employment based on the difference in the nature of the work involved. Hence, the fact that the Orthopedic Aides have historically received somewhat higher wage rates and certain additional fringe benefits does not determine the outcome herein.

Both groups of employees are directly responsible to the building principal and the teacher with whom each works. Although the Orthopedic Aides are ultimately supervised by the Director of Special Education, as needed, that position also supervises the certain Instructional Aides. Therefore, the nature of supervision of these positions does not require a division of units.

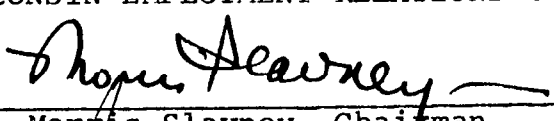
Likewise, the fact that most of the Orthopedic Aides work at one school, while the Instructional Aides are assigned throughout the various school buildings, does not require a separation of bargaining units. Nor is it persuasive that the Orthopedic Aides have been employed for a longer period of time than the Instructional Aides, or that the work day of the Orthopedic Aides is one hour longer than the work day of the Instructional Aides.

More significant is the fact that all of the Aides work with students in a non-professional capacity in support of the educational mission of the school district. In that regard, they share a community of interest with each other, and therefore we have established a single collective bargaining unit.

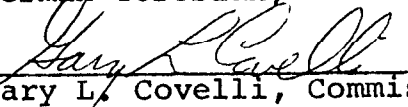
Dated at Madison, Wisconsin this 3rd day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

4/ City of Madison (Public Health) (14463-A) 7/76; Madison Joint School District (14814-A) 12/76