

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

MILTON ASSOCIATE PERSONNEL

Involving Certain Employees of

SCHOOL DISTRICT OF MILTON  
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Case XIII

No. 28104 ME-2011

Decision No. 19039

Appearances:

Mr. David B. Nance, Attorney at Law, 618 Division Street, Madison, Wisconsin 53704, on behalf of the Union.

Melli, Shields, Walker & Pease, S.C., by Mr. James R. Ruhly, 119 Monona Avenue, P.O. Box 1664, Madison, Wisconsin 53701 on behalf of the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Milton Associate Personnel having, on May 29, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the Municipal Employment Relations Act, among certain employees in the employ of the School District of Milton to determine whether said employees desire to be represented for the purposes of collective bargaining by the Petitioner; that hearing in said matter was conducted at Milton, Wisconsin on June 29, 1981, before David E. Shaw, an Examiner on the staff of the Commission; that a stenographic transcript was made of said hearing and the parties exchanged post-hearing briefs on August 20, 1981; and that the Commission, having reviewed the evidence and the arguments of the parties, and being fully advised in the premises, makes and issue the following

FINDINGS OF FACT

1. That Milton Associate Personnel, hereinafter referred to as the Union, is a labor organization having its offices located at Route 7, Janesville, Wisconsin 53545.

2. That School District of Milton, hereinafter referred to as the District, is a municipal employer and has its offices located at High Street, Milton, Wisconsin 53563.

3. That the instant proceeding was initiated by a petition filed by the Union seeking an election among certain employees of the District to determine whether said employees desire to be represented by the Union for the purpose of collective bargaining; that the Union contends that the appropriate collective bargaining unit should consist of all full-time and regular part-time non-professional employees, including, but not limited to, secretaries, custodians, cooks and aides employed by the District, excluding confidential, managerial and supervisory personnel; that the District contends that the aides should not be included in the same unit with the secretaries, custodians and cooks on the basis that the aides do not share a community of interest with the other non-professional employees and that the working conditions of the aides differ from those of the other non-professional employees; and that the District also contends that the position of Head Custodian is a supervisory position and, therefore the four employees in that position should also be excluded from any unit found to be appropriate by the Commission.

4. That the District employs eight full-time and regular part-time secretaries, eighteen full-time and regular part-time food service employees, twelve full-time and regular part-time custodians, 1/

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1/ One employee, Ernestine Lippincott is both a part-time food service employee and a part-time custodian.

and twenty-two full-time and regular part-time teacher and librarian aides, excluding claimed supervisory and confidential employees; that four of the secretaries and the regular custodians work the entire year, and the remaining secretaries, the food service employees and the aides normally only work during the school year; that for the purpose of determining eligibility for certain fringe benefits or the portion of a fringe benefit an employee working twenty hours per week or more is considered "full-time"; that the secretaries, food service employees and full-time custodians receive written individual employment contracts with the District and the contracts for the food service employees and the custodians are, by their terms, terminable by either the District or the employee upon thirty days written notice, and that aides do not receive written contracts; <sup>2/</sup> that there are secretaries, food service employees, custodians and aides working in each of the school buildings in the District; that the number of food service employees at a school varies from one to four based on the size of the school, and similarly, the number of custodians in a school varies with the size of the building; that fifteen of the twenty-two aides are assigned to the elementary schools; that the building principals are responsible over all for the general supervision of the employees in their building; that some aides work primarily in a classroom or library environment and other aides primarily perform clerical duties for teachers or a combination of classroom and clerical duties; that secretaries perform a variety of office and clerical functions; that aides have occasionally filled-in for absent secretaries and an aide at Milton East covers for the secretary at that school once or twice per week while the secretary takes a short break; that on occasion when an aide at the Middle School has too much work the CETA employee in a secretarial position at that school does typing for the aides; that the aides get their clerical supplies from the secretaries in the offices in the school buildings; that only those secretaries and custodial personnel who work during the summer receive some paid vacation; that aides do not receive paid holidays while secretaries, food service personnel and custodial personnel receive some paid holidays; that secretaries, food service employees and custodians who work twenty hours or more per week are eligible for retirement benefits, while the aides are not eligible regardless of the number of hours per week that they work; that employees in all four classifications receive similar insurance and sick leave benefits based on similar eligibility requirements; that historically the District's Board of Education has made its decision on the reemployment of secretaries, food service personnel and custodial personnel at the same time that it developed the District's budget, usually sometime between mid-April and mid-June, while the Board's decision on reemploying the aides, and the wages they will receive, has usually been made after the budget has been finalized in August; that the wage increase granted to the aides has been the same percent wage increase granted to the employees in the other three classifications; employees under contract are paid twice per month while hourly employees such as aides, employees who work less than twenty hours per week and beginning full-time custodians, are paid once per month; aides do not work overtime while employees in the other three classifications may on occasion work overtime; that the Superintendent has never met with the aides as a group, but has met with the employees in the secretarial, food service and custodial classifications on a separate basis to discuss conditions of employment, but that such meetings have been rare; and that despite some minor differences between the conditions of employment for aides and the conditions of employment of the employees in the other three classifications, the aides share a sufficient community of interest with those other employees to be appropriately included in the same bargaining unit with those employees.

5. That the petitioned-for bargaining unit consists of employees who share a community of interest sufficient to justify the conclusion

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<sup>2/</sup> At the time of the hearing the District had not issued contracts to food service employees for the 1981-82 school year due to uncertainty as to federal funding for the hot lunch program.

that it is an appropriate bargaining unit and that the establishment of such a bargaining unit avoids undue fragmentation of bargaining units of employees employed by the District.

6. That there are four Head Custodian positions in the District and these are occupied by Arnold Hoff at Milton East, Paul Jennings at the High School, Octave Liesse at the Middle School and Robert Willett at Milton West; that there are eight buildings in the District, including the Central Office; that there are three to four regular part-time custodians in addition to Hoff at Milton East, three full-time custodians and two part-time custodians in addition to Jennings at the High School, two full-time and one regular part-time custodian in addition to Liesse at the Middle School, and one regular part-time custodian and two to three student helpers at Milton West in addition to Willett; that Hoff, Jennings, Liesse and Willett all report to their respective building principals, but do not report to the Maintenance Supervisor, Lyle Thomson; that Hoff, Liesse and Willett have participated in the interviewing of custodial applicants for their schools, but that this has been for the most part limited to part-time student helpers; that Hoff, Liesse and Willett have been involved in the termination of part-time student helpers and that Liesse effectively recommended to the person in charge of the student help program that a student helper not be reemployed for the following school year; that when full-time custodians are first hired they serve a probationary period during which time they do not have a written employment contract until their Head Custodian recommends that they be put on contract; that Jennings has screened custodial applicants on his own, has participated along with the High School Principal in the interviewing of custodial applicants and has effectively recommended to the principal that certain applicants be hired; that Jennings has effectively recommended that an individual be promoted to the position of Night Shift Leadperson at the High School; that Jennings monitors the performance of the other custodians at the High School and effectively recommended the termination of a custodian on three occasions, and that his recommendation has never been rejected; that when a building requisition slip comes from a Principal authorizing overtime all four Head Custodians have the authority to determine which custodian will be assigned to work that overtime; that of the four Head Custodians only Jennings possesses the authority to adjust assignments; that Jennings schedules the vacations of custodians at the High School and independently determines whether someone will be called in to replace a custodian that is ill and who that replacement will be; that the Head Custodians receive the same fringe benefits as all full-time custodial employees; that Hoff has been employed by the District for approximately seven years and in 1980-81 received \$5.85 per hour or \$1.25 per hour more than the next highest paid custodian (a regular part-time custodian) at Milton East; that Jennings has been employed by the District for approximately three years and in 1980-81 received \$7.10 per hour or \$2.15 per hour more than the next highest paid custodian (a regular full-time custodian) at the High School; that Liesse has been employed by the District for approximately two years and in 1980-81 received \$6.08 per hour or \$1.04 per hour more than the next highest paid custodian (a regular full-time custodian) at the Middle School; that Willett has been employed by the District for approximately four years and in 1980-81 received \$5.75 per hour or \$1.75 per hour more than the next highest paid custodian (a regular part-time custodian) at Milton West; that the Head Custodians are more involved in the maintenance functions and the general operation of the building than in the cleaning tasks although they may, when necessary, perform some cleaning tasks; the Head Custodians verify and approve the time sheets of the other custodians in their buildings; that the Head Custodians work the "day" shift and relay directions and information from their building Principals to the other custodians; that Hoff, Liesse and Willett spend approximately 10-15% of their time performing some duties of a supervisory nature; that Jennings spends approximately 20% of his time performing supervisory duties; that Hoff, Liesse and Willett primarily direct the activities of other custodians and perform only limited personnel functions; and that Jennings exercises supervisory responsibilities in sufficient combination and degrees so as to make him a supervisory employee.

7. That prior to the hearing the parties stipulated that the following individuals be excluded from the bargaining unit on the basis that they perform confidential duties: Kay Savage, (Superintendent's Secretary) Marie Howard, Vernice Stark and Gertrude Williams (Central Office personnel).

8. That prior to the hearing the parties stipulated that the Supervisor of Food Service, Charlotte Huckstead, and the Maintenance Supervisor, Lyle Thomson, be excluded from the bargaining unit on the basis that they are supervisors.

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

#### CONCLUSIONS OF LAW

1. That all full-time and regular part-time non-professional employees, in the employ of the School District of Milton, including secretaries, custodians, food service employees and aides, excluding student helpers, supervisory, managerial and confidential employees, constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act.

2. That Paul Jennings, Head Custodian at Milton Senior High School, Charlotte Huckstead, Supervisor of Food Service, and Lyle Thomson, Maintenance Supervisor, are supervisory employees within the meaning of Section 111.70(1)(c) of the Municipal Employment Relations Act, and therefore Jennings, Huckstead and Thomson are excluded from the collective bargaining unit set forth above; and that Kay Savage, Marie Howard, Vernice Stark and Gertrude Williams perform confidential duties and thus are not employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, said individuals are also excluded from the unit set forth above.

3. That Arnold Hoff, Octave Liesse and Robert Willett, occupying the remaining Head Custodian positions in the District, are deemed to be employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and therefore are included in the collective bargaining unit set forth 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 60 days from the date of this directive among all full-time and regular part-time non-professional employees in the employ of the School District of Milton, including secretaries, custodians, food service personnel and aides, excluding student helpers, professional employees and supervisory, managerial and confidential employees, who were employed by the School District of Milton on October 15, 1981, 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 voting desire to be represented by Milton Associate Personnel for the purposes of collective bargaining with the School District of Milton on questions of wages, hours and conditions of employment. 3/

Given under our hands and seal at the City of Madison, Wisconsin this 15th day of October, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli /s/  
Gary L. Covelli, Chairman

Morris Slavney /s/  
Morris Slavney, Commissioner

Herman Torosian /s/  
Herman Torosian, Commissioner

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3/ The Commission has made minor non-substantive changes in the description of the petitioned-for bargaining unit in order to comply with our standard phraseology in election cases.

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

Presently only the professional employees in the employ of the District are organized for the purpose of collective bargaining. In the instant proceeding the Union seeks to represent a unit consisting of the otherwise eligible non-professional employees of the District. The District contends that the aides should not be included in such a bargaining unit on the claim that the aides do not share a sufficient community of interest with the other groups of non-professional employees.

Our Findings of Fact reflect the similarities and differences between the aides and the other groups of non-professional employees in the District, relative to their conditions of employment. The differences are in the areas of retirement, paid holidays, paid vacation, over time, the issuance of individual employment contracts and when the reemployment decision is made regarding aides. The differences are, however, mainly between the aides and the "full-time" employees. Similar to the aides, those employees amongst the secretaries, food service personnel and custodians who do not work at least twenty hours per week also are not eligible to receive retirement benefits, such "part-time" secretaries or food service personnel do not receive paid holidays, secretaries who do not work during the summer months, and food service personnel do not receive paid vacations and "part-time" custodians are not issued individual employment contracts. Moreover, the contracts issued to custodians and food service employees are terminable by either party upon thirty days written notice, so that the difference in job security is minimal even in those instances.

The District contends that common supervision is lacking on the basis that classroom teachers or the librarians supervise the aides. The record indicates that at most the teachers and librarian direct the work of the aides. There has been no showing that the teachers or the librarian exercise any real supervisory authority over the aides. If such were the case such teachers would be supervisory employees.

Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act requires the Commission to "whenever possible avoid fragmentation" of bargaining units. In keeping with that statutory policy and on the basis that the similarities outweigh the differences in the conditions of employment of the aides and the other three groups of non-professional employees, the Commission concludes that the aides should not be excluded from the collective bargaining unit consisting of the otherwise eligible non-professional employees in the District. Such a conclusion is consistent with our decisions in previous cases where we have found such an overall unit to be appropriate. 4/

Regarding the issue as to the claimed supervisory status of the four Head Custodians, the facts in the record establish that only Paul Jennings, the Head Custodian at Milton Senior High School, possesses and exercises supervisory authority in sufficient combination and degree to justify a conclusion that his position is supervisory. This is especially apparent in the area of the authority to effectively recommend the hire, promotion, discipline or discharge of employees.

The remaining Head Custodians, Hoff, Liesse and Willett, while performing some duties of a supervisory nature spend only a small portion of their work day performing such duties and possess very little real authority in the area of hiring and firing. Hence, they cannot be considered to be more than lead workers.

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4/ School District of Maple (18469) 2/81; Columbus School District (17259) 9/79; Wisconsin Heights School District (17182) 8/78.

Based on the foregoing, the Commission concludes that of the four Head Custodians only the Head Custodian at the Milton Senior High School is a supervisor within the meaning of MERA.

Dated at Madison, Wisconsin this 15th day of October, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli /s/  
Gary L. Covelli, Chairman

Morris Slavney /s/  
Morris Slavney, Commissioner

Herman Torosian /s/  
Herman Torosian, Commissioner