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In the Matter of the Petition of

WISCONSIN EDUCATION

ASSOCIATION COUNCIL

Involving Certain Employees of

WAUKESHA COUNTY TECHNICAL

INSTITUTE

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Appearances:  
Friebert & Finerty, Attorneys at Law, 710 North Plankinton Avenue, Milwaukee, Wisconsin 53203, by Mr. Robert H. Friebert and Mr. William S. Roush, Jr., appearing on behalf of the Petitioner.  
Quarles & Brady, Attorneys at Law, 780 North Water Street, Milwaukee, Wisconsin 53202, by Mr. George K. Whyte, Jr., appearing on behalf of the Employer.  
Podell, Ugent & Cross, S.C., Attorneys at Law, 207 East Michigan Street, Milwaukee, Wisconsin 53202, by Ms. Nola Hitchcock Cross, appearing on behalf of the Intervenor.

Wisconsin Education Association Council having, on December 21, 1981, 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 in the employ of Waukesha County Technical Institute; and a hearing in this matter having been held on April 27 and 28, 1982 in Waukesha, Wisconsin, Examiner Christopher Honeyman being present; and Local 2491, American Federation of State, County and Municipal Employees, AFL-CIO, having intervened in this matter at the hearing; and the parties having filed briefs with the Commission, and the record having been closed on June 9, 1982; the Commission, having considered the record, and being fully advised in the premises, makes and issues the following

## No. 19751

Account Clerk I, II  
 Assistant to Registrar  
 Bookkeeper I, II  
 Clerk Typist I, II, III  
 Custodian  
 Maintenance Man

Key Punch Operator I, II  
 Secretary I, II  
 Stenographer I, II  
 Switchboard Operator  
 Janitor-Janitress

5. That in a declaratory ruling proceeding initiated by AFSCME in the fall of 1971, the Commission determined that Laboratory Assistants in the employ of the District, as well as other para-professional employees, were not included in said clerical and custodial bargaining unit represented by AFSCME.

6. That in August, 1973, upon stipulation of AFSCME and the District, the Commission, in an Order Clarifying Bargaining Unit, determined that the positions of Book Store Manager, and High School Relations Assistant were managerial employees, and therefore excluded from said unit; and that in September, 1975, in a similar proceeding, the Commission determined that the position of High School Relations Assistant had changed and therefore was not a managerial or professional employee and should be included in said unit.

7. That since the original certification, and continuing through the time of the instant proceeding, the number of facilities operated by the District has increased greatly, the number of employees and classifications included in the unit has also increased, the latter, for the most part, by voluntary agreement between AFSCME and the District; and that the 1980-1982 collective agreement between AFSCME and the District reflects that the following positions are presently included in the collective bargaining unit consisting of "all regular full-time office employees, custodial employees, food service employees, and laboratory assistants, excluding confidential, supervisory and professional employees":

Accounts Payable Clerk  
 Audio Visual Technician  
 Bookstore Clerk  
 Clerk Typist  
 Computer Operator  
 Curriculum Library Clerk  
 Custodian  
 Data Entry Operator  
 Downtown Campus Clerk  
 Duplicating Technician  
 Educational Assistant  
 Electronics Assistant  
 Evening Registration Clerk  
 Financial Aids Clerk  
 Food Production Worker  
 Food Service Clerk  
 Food Service Leader  
 Food Service Worker  
 General Accounts Clerk  
 General Clerk  
 Graphics Technician  
 Group Dynamics Clerk  
 Guidance/Admissions Clerk  
 High School Relations Asst.  
 Industrial Assistant  
 Industrial Technician  
 Janitor  
 Lab Assistant

Library Clerk  
 Library Technician  
 Mailroom/Receiving Clerk  
 Maintenance Helper  
 Maintenance Leader  
 Maintenance Man  
 Media Clerk  
 Media Technician  
 Payroll Clerk  
 Physical Plant Clerk  
 Placement Clerk  
 Programmer  
 Projects Account Clerk  
 Publication/Comm. Tech.  
 Purchasing Clerk  
 Receptionist  
 Registration Clerk  
 Scheduling Aide  
 School Health Clerk  
 Secretary  
 Senior Programmer  
 Student Accounts Clerk  
 Student Records Clerk  
 Switchboard Operator  
 Technical Assistant  
 Typesetter  
 Word Processing Operator

8. That the instant proceeding was initiated by WEAC, in the form of a petition, requesting the Commission to conduct a representation election among employees of the District employed in the collective bargaining unit as described in the collective bargaining agreement between AFSCME and the District, and as set forth in Finding of Fact 7; that in said petition WEAC alleged that the unit consisted of approximately 189 employees; that WEAC submitted authorization cards executed by a number of bargaining unit employees, which the Commission administratively determined were in sufficient number to authorize the processing of the petition, which was assigned to a Commission Examiner for purposes of hearing; that during the course of the hearing, which was conducted on April 27 and 28, 1982, AFSCME contested the adequacy of the showing of interest filed by WEAC in support of its petition, and on May 21, 1982 AFSCME filed a petition containing a

number of signatures, alleged to have been executed by various employees involved, wherein said employees indicated that they were revoking the authorization previously executed by them supporting the petition of WEAC; and that on said basis AFSCME moved that the Commission dismiss the instant petition.

9. That, also during the course of the hearing, WEAC and the District agreed that the unit as described in the collective bargaining agreement between AFSCME and the District constitutes an appropriate bargaining unit; that AFSCME, despite the fact that the unit alleged to be appropriate is consistent with the unit description in its collective bargaining agreement, contends that the desired unit may not be appropriate for the reason that (1) the unit has increased seven fold from the date of its original certification, (2) the employees therein are now employed in many separate locations as compared to one in 1970, (3) a significant number of new classifications have been added since the original certification, (4) separate groupings of employees are much larger at the present than formerly, and (5) they have different supervision, uniforms, duties and interests.

10. That, also during the course of the hearing, while taking no position with regard thereto, AFSCME introduced, as exhibits, a number of job descriptions and called to the Examiner's attention that the Commission had the duty to determine whether the positions involved constituted professional positions within the meaning of the Municipal Employment Relations Act, and that such positions are as follows:

High School Relations Asst.	Programmer I
<u>Lab. Assistant III</u>	Programmer II
Accounting	
Marketing & Related Business	<u>Technician II</u>
	Community Relations
<u>Lab. Assistant IV</u>	Media
Associate Degree Nursing	
<u>Instructional Assistant</u>	<u>Technician III</u>
Communication Skills/Reading/	Media
The Learning Place	
	<u>Technician IV</u>
	Engineering

11. That neither WEAC nor the District contends that the occupants of the above positions are professional employees, nor do they contend that said positions should be excluded from the collective bargaining unit alleged to be appropriate by WEAC.

12. That, as indicated previously herein, the Commission in September, 1975 concluded that the position of High School Relations Assistant was properly included in the unit represented by AFSCME, and no evidence was adduced herein establishing that the duties and responsibilities of said position have changed since that date; that the remaining positions noted in Finding of Fact 10 have, in the past, and to date, been included in the unit; that an examination of the job descriptions of said positions neither reflect the required independence of judgment, nor sufficient academic requirement, to constitute such positions professional in nature.

13. That, during the course of the hearing, the District contended that the Scheduling Aide, employed in the Registration Department, and occupied by Lou Ann Metzger, which position has been included in the bargaining unit, is a supervisory position 1/; that evidence establishes that Metzger is in general charge of eight full-time, and at times nine to fifteen part-time employees, and, as such, assigns work to said employees, schedules their working hours on her own authority, has the authority to require said that employees correct and redo their work, and to assign overtime without the approval of her superiors; that Metzger spends from 65 to 80% of her time in the performance of such duties; that Metzger attends supervisory meetings, and has participated in the hiring process of new employees during the past five years; and that therefore Metzger performs supervisory duties and responsibilities in sufficient combination and degree so as to constitute her position supervisory.

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1/ Neither WEAC nor AFSCME expressed their view on the position.

14. That, also during the course of the hearing, the District claimed that the position of Clerk/Typist part-time, employed in the Personnel Department, is a confidential employee; that, while WEAC expressed no view with regard thereto, AFSCME contends that the position is not confidential and should continue to be included in the bargaining unit; that said position was created approximately a year and one-half ago on a fifteen hour per week basis and, at the time of the hearing, the position was occupied by Jean Zunker; that a large part of the clerical work load in the Personnel Department involves typing of data and proposals utilized by the District for collective bargaining purposes, mediation-arbitration, and in the processing of grievances involving non-professional as well as approximately 200 professional employees; that at the present Zunker works approximately 28 hours per week; that, while two other clerical employees perform similar duties, the nature of the Department's function requires the participation of all clerical personnel in the performance of duties involving matters privy to the collective bargaining process and to the administration of the collective bargaining agreement to which the District is a party.

That upon the basis of the above and foregoing Findings of Fact the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. That the showing of interest in support of a petition filed herein with the Wisconsin Employment Relations Commission, seeking an election among municipal employees, pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act, to determine whether said employees desire a change in their collective bargaining representative, is sufficient.

2. That the positions of High School Relations Assistant, Laboratory Assistants, Instructional Assistants, Programmers, and Technicians in the employ of the Waukesha County Technical Institute are not occupied by "professional" employees within the meaning of Sec. 111.70(1)(1) of the Municipal Employment Relations Act, but rather, said positions are occupied by "municipal employees" within the meaning of Sec. 111.70(1)(b) of said Act.

3. That the position of Scheduling Aide in the employ of the Waukesha County Technical Institute is occupied by a "supervisory" employee within the meaning of Sec. 111.70(1)(o)1 of the Municipal Employment Relations Act and therefore is not occupied by a "municipal employee" within the meaning of Sec. 111.70(1)(b) of said Act.

4. That the position of Clerk/Typist (part-time) in the employ of the Personnel Department of the Waukesha County Technical Institute is occupied by a "confidential" employee, and therefore is not occupied by a "municipal employee" within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

5. That "all regular full-time and regular part-time office, custodial, and food service employees, Laboratory Assistants, Instructional Assistants, High School Relations Assistant, Programmers, and Technicians in the employ of Waukesha County Technical Institute, excluding professional, managerial, supervisory, and confidential employees", constitutes an appropriate collective bargaining unit within the meaning of Secs. 111.70(1)(e) and 111.70(4)(d)2 of the Municipal Employment Relations Act.

6. That a question of representation, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act, has arisen among the employees of the Waukesha County Technical Institute included in the appropriate collective bargaining unit set forth above.

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

#### DIRECTION OF ELECTION

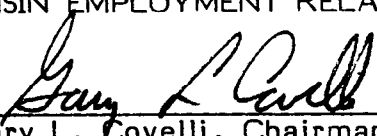
IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days of the date of this Direction in the bargaining unit consisting of all regular full-time and regular part-time office, custodial, and food service employees, Laboratory Assistants, Instructional Assistants, High School Relations


Assistant, Programmers, and Technicians in the employ of Waukesha County Technical Institute, excluding professional, managerial, supervisory, and confidential employees, who were employed by said Municipal Employer on July 16, 1982, 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 said employees voting desire to be represented by Wisconsin Education Association Council, or by Local 2491, affiliated with District Council 40, American Federation of State, County and Municipal Employees, AFL-CIO or by neither of said organizations for the purpose of collective bargaining with Waukesha County Technical Institute, on wages, hours and conditions of employment.

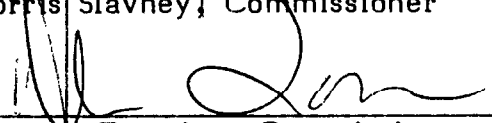
Given under our hands and seal at the City of  
Madison, Wisconsin this 16th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
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Gary L. Covelli, Chairman

  
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Morris Slavney, Commissioner

  
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Herman Torosian, Commissioner

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

Various issues have arisen in the instant proceeding. Initially AFSCME moved that the Commission dismiss the WEAC petition, claiming that the showing of interest accompanying same, in effect, is insufficient, since a number of employees who had executed the showing of interest in behalf of WEAC have since then indicated that they desired to revoke same in favor of AFSCME. AFSCME, while not contending same, suggests that the unit may be inappropriate and that certain positions presently included in the bargaining unit involved, and at least to the date of filing the petition, represented by AFSCME, may be professional employees, and thereby cannot be included in the unit without a vote on their part. Further, the District raised issues with regard to the inclusion of two additional positions in the unit, one involving a claim of supervisory duties, and the other involving a claim that the position was "confidential".

Discussion

The Commission has long established that the showing of interest in support of a petition seeking an election in a bargaining unit presently represented by another organization is determined administratively by the Commission in order to preserve the "secrecy" of the intent of the employees in the unit involved. 2/ The fact that some employees who previously executed a showing of interest in support of the petition may have changed their support does not constitute a basis for negating their original intent. In any event, the showing is merely to justify the further processing of the proceeding. The showing of interest herein was sufficient. The final intent of the employees as to their choice of representative can be reflected by their secret ballots cast in an election conducted by the Commission.

AFSCME argues that the existing unit "may be" inappropriate essentially because it has greatly increased in scope since the Commission's original certification and because certain groups of employees, particularly custodial and maintenance employees, may have a community of interest separate from other employees.

The record establishes that between our 1970 certification of this unit 3/ and the present time, the number of facilities operated by the District has increased greatly, the number of employees covered has multiplied and new classifications have been added to the unit both by unit clarification proceedings and by voluntary agreement between the District and AFSCME. All of the positions added, however, are consistent with the general character of the original unit. While the record indicates that factors of common supervision and lack of actual transfers in and out of the custodial/maintenance group might favor a finding that that group has an independent community of interest, that community is evidently of lesser significance than the broad community of interest among all existing unit employees. Successive contracts have been bargained by AFSCME with participation from all sectors of the present unit; fringe benefits are substantially the same with only minor variations; working conditions are also substantially similar; and most of the contract's language provisions apply equally to all employees in the present unit. Supervision, while departmental for work-related purposes, is centralized for all such employees for purposes of discipline and grievances (at higher levels) under the District's Personnel Department. Though the approximately two hundred employees in the present unit work in a variety of locations, most are in the District's main Pewaukee campus and any attempt to draw departmental lines purporting to show physical separation of one group of classifications would be strained. No party here seeks a separate election of some

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2/ Milwaukee Board of School Directors (11165) 7/72.

3/ Decision No. 9874 (10/70).

smaller group of classifications, and the statutory policy against undue fragmentation of bargaining units favors the present "overall" unit. In short, virtually every factor militates in favor of the appropriateness of the present unit, and we are satisfied that it is indeed appropriate.

AFSCME hinted that the positions noted in Finding of Fact 10 may be professional employees and should not be included in the bargaining of non-professional employees unless said employees vote to do so as required by MERA. 4/ While we are curious as to why AFSCME did not raise the Commission's duty in this regard at the time these positions were established and included in the non-professional unit represented by it, we have considered the suggestion offered by AFSCME. Sec. 111.70(1)(1) of MERA sets forth the definition of professional employees as follows:

1. Any employee 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 intellectual instructions and 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, or
2. Any employee who:
  - a. Has completed the courses of specialized intellectual instructions 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 employee as defined in subd. 1.

Examination of the job descriptions of the alleged professional positions involved does not establish that the requirements for the positions meet the above statutory criteria, and therefore, we conclude that the occupants of said positions are not professional employees.

The District argues that the position of Scheduling Aide, assigned to the Registration Department, is a supervisory position and should therefore be excluded from the unit herein. While the position has been included in the existing unit, neither labor organization involved herein opposes or agrees with the District. The indicia considered by the Commission to determine whether an individual occupies a supervisory position was established by the Commission as early as 1964, and has continued to date, 5/ and such indicia are as follows:

- a. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
- b. The authority to direct and assign the work force.

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4/ Sec. 111.70(4)(d)2.a.

5/ City of Milwaukee (6960) 12/64; City of Manitowoc (18590) 4/81.

- c. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
- d. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
- e. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
- f. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
- g. The amount of independent judgment and discretion exercised in the supervision of employees.

We are satisfied that the duties and responsibilities of the incumbent of the position involved, Lou Ann Metzger, are sufficient, in combination and degree, to clearly establish that Metzger is a supervisory employee.

The District, contrary to the position of AFSCME, contends that Jean Zunker, the part-time Clerk/Typist employed in the Personnel Department, is a confidential employee, and therefore should be excluded from the unit involved herein. In determining whether an employee performs confidential duties, the Commission must be satisfied that the individual occupying the position has access to, or participates in, confidential matters relating to labor relations. 6/ Here Zunker's position was created approximately 1 1/2 years ago on a 15 hour per week basis. There is unrefuted evidence that while originally work was assigned within the office so that that part which was confidential in nature was done by two other personnel clerks in the office already recognized as confidential, the confidential workload has increased considerably within that period. Zunker's hours have increased to about 28 per week and at present the proportion of her work which is confidential varies between 30 and 90% depending on the department's overall workload. Although the Personnel Department employs two additional office clerical personnel, who are agreed upon as being "confidential", the record establishes that, because of the nature of the duties and responsibilities of said department, and the significant amount of clerical work relating to confidential labor relations matters involving both professional and non-professional employees employed in the District, Zunker, occupying the position of part-time clerk/typist performs sufficient confidential duties so as to be excluded from the unit.

We assume that as of this date some of the employees involved herein are not actively employed because of the summer recess, and therefore we have directed that the election to be conducted herein shall be held "within 60 days" of the date of this decision, with the assumption that the District's fall term will commence sometime during said 60 day period. The Commission's Election Supervisor will contact the parties, in sufficient time, with respect to the mechanics of the election.

Dated at Madison, Wisconsin this 16th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli  
 Gary L. Covelli, Chairman

Morris Slavney  
 Morris Slavney, Commissioner

Herman Torosian  
 Herman Torosian, Commissioner

6/ City of Milwaukee (11971) 7/73; Outagamie County (14062) 10/75.