

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
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MADISON MUNICIPAL EMPLOYEES, :  
LOCAL 60, AFSCME, AFL-CIO :  
:   
Involving Certain Employes of :  
:   
JOINT SCHOOL DISTRICT NO. 2, :  
CITY OF SUN PRAIRIE, et al. :  
:   
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Case XXXIV  
No. 30491 ME-2149  
Decision No. 20459

Appearances:

Mr. Darold Lowe, Staff Representative, Madison Municipal Employees, Local 60, AFSCME, AFL-CIO, 5 Odana Court, Madison, WI 53719 on behalf of the Petitioner.

Mr. Stephen Pieroni, Staff Counsel and Mr. Gordon McQuillen, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P.O. Box 8003, Madison, WI 53708, and, Mr. Phillip Borkenhagen, Executive Director, Capital Area UniServ - North, 4800 Ivywood Trail, McFarland, WI 53558 on behalf of the Sun Prairie Education Association.

No appearance was entered for Joint School District No. 2, City of Sun Prairie, et al., although said party was notified of the hearing.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Madison Municipal Employees, Local 60, AFSCME, AFL-CIO, having on October 4, 1982 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employes of Joint School District No. 2, City of Sun Prairie, et al., to determine whether said employes desire to be represented by said Petitioner for the purposes of collective bargaining; and hearing in the matter having not been scheduled pending efforts of the parties to enter into a stipulation for such an election; and efforts in that regard having been unsuccessful, hearing in the matter was conducted on December 12, 1982 at Madison, Wisconsin before Douglas V. Knudson, a member of the Commission's staff, during the course of which the Sun Prairie Education Association was permitted to intervene on the basis of its claim of an interest in the matter; and the parties having chosen not to file post-hearing briefs; and the transcript having been received on December 20, 1982; and the Commission having considered the entire record and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Joint School District No. 2, City of Sun Prairie, et al., hereinafter referred to as the District, is a municipal employer with offices at 509 Commercial Avenue, Sun Prairie, WI 53590.

2. That Madison Municipal Employees, Local 60, AFSCME, AFL-CIO, hereinafter referred to as Local 60, is a labor organization with offices at 5 Odana Court, Madison, WI 53719.

3. That the Sun Prairie Education Association, hereinafter referred to as the SPEA, is a labor organization with offices at Capital Area UniServ - North, 4800 Ivywood Trail, McFarland, WI 53558.

4. That the instant proceeding was initiated by a petition filed by Local 60 seeking an election to determine whether the classroom/instructional aides and special education aides employed by the District desire to be represented by Local 60 for the purpose of collective bargaining with the District; and, that the SPEA was permitted to intervene in the proceeding on the basis of its claim to have an interest in representing the employes covered by the petition.

5. That following the conduct of an election, the Commission certified Local 60 as the bargaining representative of all clerical employees of the District, excluding supervisory and confidential employees 1/; that in a subsequent proceeding the Commission included in the bargaining unit represented by Local 60 the positions of purchasing clerk and teacher aides, including the teacher aide at the Senior High Library and the teacher aide at the Northside School, both of which positions involved direct student contact during at least half of the aide's working time 2/; and, that in a subsequent election conducted by the Commission, following the filing of a petition by Local 60 in May 1979, the required number of unrepresented teacher aides and federally funded employees of the District failed to vote for inclusion in the existing bargaining unit represented by Local 60. 3/

6. That the SPEA is the bargaining representative for all professional employees of the District, excluding principals, director of business and support services, director of educational services, athletic director, social workers, school psychologists, and, the district administrator.

7. That Local 60 and the District were parties to a collective bargaining agreement covering the period of July 1, 1980 through June 30, 1982, which agreement contained the following provision:

ARTICLE I  
Recognition

- 1.01 The Board recognizes the Union as the exclusive bargaining agent for all regular full-time and regular part-time clerical, custodial, maintenance and teacher aide (as determined by the W.E.R.C. in its November 10, 1976 decision) employees, but excluding supervisory, professional and confidential employees. The Superintendent's secretary, the Business Manager's secretary, the Bookkeeper, and employees excluded in the November 1976 W.E.R.C. Unit Clarification decision will not be considered as part of the bargaining unit;

and, that said provision remains unchanged in the successor agreement between the parties.

8. That the SPEA contends the unrepresented aides have a community of interest with the professional employees with whom they work, and further, inclusion of the aides in the professional employee bargaining unit, pursuant to the necessary vote for merger by the professional employees, would avoid fragmentation of bargaining units; that, in the alternative, the SPEA believes a bargaining unit consisting of the currently unrepresented aides should be found to be appropriate; and, that Local 60 argues the unrepresented aides should be accreted to the bargaining unit of non-professional employees, which it represents, since said groups of employees have a community of interest and since such an accretion would avoid a fragmentation of bargaining units.

9. That the unrepresented aides primarily work in classrooms assisting teachers with the instruction of students, including working alone with small groups of students, whereas most of the represented aides perform mainly clerical tasks outside of a classroom; that individuals in the two groups of aides have little or no contact during their work time; that those unrepresented aides assigned to special education classrooms are certified as special education aides by the Wisconsin Department of Public Instruction; that the represented and unrepresented aides both fill out time cards, report absences to their building principals and receive similar hourly wage rates and wage increases; and, that represented clerical aides have substituted for absent unrepresented aides on a frequent basis, perhaps as often as one-half of the absences for which replacements are obtained.

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- 1/ Sun Prairie Joint School District No. 2 9400 (1-70).  
2/ Sun Prairie Joint School District No. 2 14392-A (11-76).  
3/ Sun Prairie Joint School District No. 2 9400-B (2-80).

10. That Local 60 represents sixteen aides, of whom three are in a layoff status; and, that there are approximately eighteen unrepresented aides.

11. That the differences in duties between the represented and unrepresented aides constitutes an insufficient basis upon which to either establish a separate bargaining unit consisting solely of the unrepresented aides, or, accrete the unrepresented aides to the existing bargaining unit of professional employees, inasmuch as either of those acts would ignore the similarities in wages, hours and working conditions shared by the represented and unrepresented aides, and further, would result in fragmentation of bargaining units through the placement of non-professional aides in two separate bargaining units.

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 clerical, custodial, maintenance and teacher aide employees of the Joint School District No. 2, City of Sun Prairie, et al., excluding supervisory, professional and confidential employees constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

2. That a question of representation, within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act, exists among the unrepresented aides, including classroom/instructional aides and special education aides, employed by Joint School District No. 2, City of Sun Prairie, et al.; that said group of employees does not constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, but rather, appropriately should be included in the collective bargaining unit set forth in Conclusion of Law No. 1, provided a majority of the employees voting in the election directed herein vote for inclusion in said unit; and, that it would not be appropriate to include said unrepresented aides in the bargaining unit of the District's professional employees since placement of non-professional aides in two bargaining units would constitute undue fragmentation of bargaining units, and therefore, the Sun Prairie Education Association will not be placed on the ballot in the election directed herein.

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

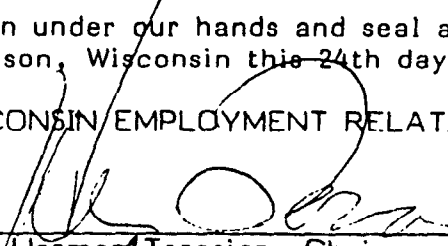
#### DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in a voting group of certain unrepresented classroom/instructional aides and special education aides who were employed by Joint School District No. 2, City of Sun Prairie, et al, on March 24, 1983 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 included in an existing collective bargaining unit consisting of all regular full-time and regular part-time clerical, custodial, maintenance and teacher aide employees employed by Joint School District No. 2, City of Sun Prairie, et al., but excluding supervisory, professional and confidential employees, which unit is presently represented by Madison Municipal Employees, Local 60, AFSCME, AFL-CIO.


Given under our hands and seal at the City of  
Madison, Wisconsin this 24th day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

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

The Commission is mindful that Section 111.70(4)(d)2.a. of MERA provides that fragmentation of bargaining units should be avoided "by maintaining as few units as practicable in keeping with the size of the total municipal work force." That provision, however, also states that "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." Taken together, these two requirements in effect dictate that a balance must be struck between an unreasonable number of bargaining units on the one hand, and the need for ensuring that the unique interests and aspirations of a given group of employees will not be subordinated to the interests 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.

In the instant matter the unrepresented aides primarily perform instructional support duties involving student contact in a classroom setting under the direction of a teacher. Conversely, most of the represented aides primarily perform clerical duties which do not involve either student contact or a classroom setting and are under the supervision of an administrator. Notwithstanding such differences between the groups of employees, the wages, hours and other working conditions of said groups are largely similar. Also, while the special education aides are certified by the Wisconsin Department of Public Instruction, all of the aides occupy non-professional positions. Further, as evidenced by a prior decision of the Commission, 4/ at least two of the represented aides spend a minimum of one-half of their working time in direct contact with students. Moreover, there have been frequent instances where clerical aides have substituted for absent classroom/instructional or special education aides.

In the past the Commission has found that all non-professional employees of a school district constituted an appropriate bargaining unit. 5/ Such a unit encompassed employees performing a variety of blue collar and white collar duties.

If the Commission were to adopt either of the SPEA's positions on the appropriate unit in this matter, the result could be the existence of two bargaining units each of which included non-professional aide positions. Such a result would cause unwarranted fragmentation of bargaining units contrary to the policy expressed in MERA. Therefore, the Commission does not find a separate bargaining unit of the unrepresented classroom/instructional and special education aides to be appropriate. For the same reason, the Commission does not believe it would be appropriate to provide said employees with a vote on whether they desire to be accreted to the existing bargaining unit of professional employees represented by the SPEA, because a favorable vote also would result in the establishment of two bargaining units both of which include aide positions. Rather, the Commission concludes that, if the classroom/instructional and special educational aides want to be represented for collective bargaining purposes, said employees appropriately should be included in the existing bargaining unit in which certain aide positions already are included. Because the election directed herein is limited to the issue of whether the unrepresented aides should be included in the existing bargaining unit represented by Local 60, the name of the SPEA will not be placed on the ballot.

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4/ Decision No. 14392-A (11-76), supra.

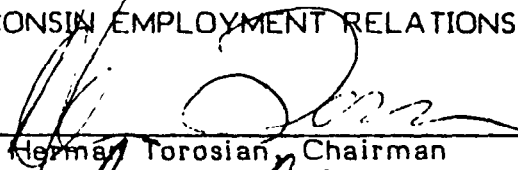
5/ Maple School District 18469 (2-81); Wisconsin Heights School District 17182 (8-79).

If the unrepresented aides vote for inclusion in the existing bargaining unit represented by Local 60, the terms and conditions of any existing collective bargaining agreement covering said unit will not be applied automatically to the aides unless collective bargaining produces such a result.

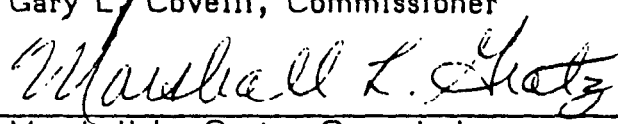
Dated at Madison, Wisconsin this 24th day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner