

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
MADISON TEACHERS INCORPORATED :
Involving Certain Employes of : Case CXXXV
MADISON METROPOLITAN : No. 31778 ME-2231
SCHOOL DISTRICT : Decision No. 20835-A

Appearances:

Kelly, Haus & Katz, Attorneys at Law, by Mr. Stephen G. Katz, 302 East Washington Avenue, Suite 202, Madison, Wisconsin 53703 and Madison Teachers, Inc., by Mr. John A. Matthews, Executive Director, 821 Williamson Street, Madison, Wisconsin 53703, appearing on behalf of the Petitioner.

Ms. Susan Wiesner-Hawley, Labor Contract Manager, Madison Metropolitan School District, 545 West Dayton Street, Madison, Wisconsin 53703, appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

Madison Teachers, Incorporated, hereinafter referred to as MTI, having on June 16, 1983, filed a petition requesting the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, to clarify a bargaining unit of employes of the Madison Metropolitan School District, hereinafter referred to as the District or the Employer; and a hearing having been held on July 29, 1983, before Daniel J. Nielsen, a hearing examiner on the Commission's staff; and a stenographic record of the hearing having been made, a transcript of which was received by the examiner on August 25, 1983; and the parties having submitted written arguments, which were exchanged through the examiner on September 8, 1983; and the Commission having considered the evidence and the arguments of the parties, and being fully advised in the premises, hereby makes the following

FINDINGS OF FACT

1. That MTI is a labor organization representing municipal employes for the purpose of collective bargaining; that John A. Matthews is the Executive Director of MTI; and that MTI maintains its offices at 821 Williamson Street, Madison, Wisconsin 53703.

2. That the District is a municipal employer providing educational services to the citizens of the District; that in the provision of said services the District employs professional and non-professional employes; that the Labor Contract Manager of the District is Susan Wiesner-Hawley; and that the District maintains its primary offices at 545 West Dayton Street, Madison, Wisconsin 53703.

3. That pursuant to an election ordered by the Commission in April, 1974 (Decision No. 12654), MTI was certified as the exclusive bargaining representative for a collective bargaining unit comprised of:

all regular full-time and regular part-time school aides employed by the Madison Board of Education, Joint School District No. 8, including teacher aides, resource center aides, library aides, handicapped children's aides, and counselor aides, but excluding lunch room and playground supervisors, and all other employes.

That MTI and the District thereafter voluntarily agreed to add bilingual aides 1/ and certain orthopedic/health aides 2/ to the collective bargaining unit; that as a result of the voluntary expansion of the previously certified unit, MTI is the exclusive bargaining representative for the following described unit:

all regular full-time and regular part-time school aides employed by the Madison Board of Education, Joint School District No. 8 (Madison Metropolitan School District) directly or indirectly assisting professional staff in the instructional program including teacher aides, resource center aides, library aides, handicapped children's aides, bilingual aides, orthopedic/health aides employed on or after August 19, 1980, and counselor aides, but excluding lunch room and playground supervisors, and all other employees.

and that the above-described unit contains approximately 209 employees.

4. That prior to the 1983-84 school year, student health care services for the District were provided through a purchase of services agreement with the City of Madison Health Department; that in the summer of 1982, the District determined to assume the provision of these services directly rather than purchasing them from the City; that as part of assuming the provision of the services, the District determined to hire approximately 35 nurse's aides; that 35 aides were hired by the District in July of 1983 and were scheduled to begin their duties with the District on August 23, 1983; that a majority of the aides hired by the District were formerly employed as health aides by the City of Madison; and that 14 of these aides were hired on an 18 hour per week basis, while the balance were hired for hours varying between 22 and 32 1/2 hours per week.

5. That the nurse's aides employed by the District will be individually assigned to a single school building; that the work of the nurse's aides will be directed by the school nurses and the building principals; that the school nurses will generally not be assigned to only one building, but rather will travel between three and four buildings; that the nurse's aides will administer and maintain the school's health office in the absence of the school nurse; that the nurse's aides will perform clerical functions such as filing, record keeping, typing, and internal audits of health programs; that the nurse's aides will be responsible for initial evaluation and basic treatment of injuries and illnesses among the students and the faculty of the schools; that the nurse's aides employed by the District are required to have successfully completed 24 credit hours in an approved school aide course and to retake and successfully complete the 24 hour approved course every three years.

6. That on June 16, 1983, MTI filed a petition to clarify the bargaining unit set forth in Finding of Fact 3, supra, by accreting thereto the nurses aides to be employed in the District's school health program.

7. That there are no unrepresented aides employed by the District other than the nurse's aides; that the nurse's aides positions in the District did not exist at the time of the original certification of the United School Aides (USA) unit in the District, nor at the time of the subsequent voluntary expansions of said unit; that the levels of education and skill required for the nurse's aides positions are higher than those required for most of the other aides positions in the District; that the levels of education and skill required for the nurse's aide position are comparable to those required of the handicapped children's aides, who are included in the USA unit; that the duties of the nurse's aides primarily involve assisting in the delivery of services by the professional nurse; that the duties of the other aides in the District primarily involve assisting in the delivery of services by related professionals; that the nurse's aides will be assigned to work at the District schools; that the other aides represented in the

1/ See Petitioner's Exhibit 9, United School Aides Collective Bargaining Agreement, Section I Recognition, Subsection B. Collective Bargaining Representative, at page 1.

2/ See Petitioner's Exhibit 10, Memorandum of Understanding, Subsection 4 at page 2.

USA unit are assigned to work at the District schools; that the nurse's aides are ultimately subject to the supervision of the building principals; that the other aides employed by the District and included in the USA unit are ultimately subject to the supervision of the building principals; and that the establishment of a separate unit of nurse's aides would result in undue fragmentation of bargaining units in the District's work force.

8. That the addition of 35 nurse's aides to the present USA unit of approximately 209 people does not alter or affect the majority status of Madison Teachers, Incorporated in said unit, and therefore does not raise a question of representation in said unit.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the nurse's aides employed by the District share a community of interest with the persons presently represented in the collective bargaining unit set forth in Finding of Fact 3.

2. That the establishment of a separate unit of nurse's aides would constitute undue fragmentation of bargaining units in contravention to Sec. 111.70(4)(d) of MERA, and that such a unit would, therefore, be inappropriate.

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

ORDER CLARIFYING BARGAINING UNIT

1. That the positions of nurse's aides are appropriately included within the collective bargaining unit hereafter described as:

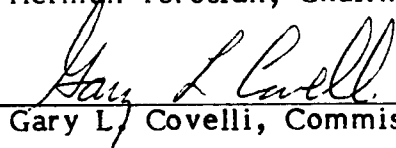
all regular full-time and regular part-time school aides employed by Madison Board of Education, Joint School District No. 8 (Madison Metropolitan School District), directly or indirectly assisting professional staff in the instructional program including teacher aides, resource center aides, library aides, handicapped children's aides, bilingual aides, orthopedic/health aides employed on or after August 19, 1980, nurses aides, and counselor aides but excluding lunch room and playground supervisors and all other employees.

Given under our hands and seal at the City of
Madison, Wisconsin this 18th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

3/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats. (Footnote continued on Page Four)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
CLARIFYING BARGAINING UNIT

BACKGROUND:

The provision of health services in the Madison schools has, until August 23, 1983, been accomplished through the purchase of services from the City of Madison Health Department. In 1982, the District determined that the level of services desired could be more efficiently and economically provided through an "in-house" health services operation. To that end, the District terminated its contract with the City of Madison and engaged in planning and hiring for a new health services operation. Part of the new operation was the employment, beginning in the summer of 1983, 4/ of 35 nurse's aides. These persons would serve much the same function as the health aides that had been provided by the City. In early July, the District's Public Health Services Coordinator, Mary Gulbrandsen, together with Diane Wood, one of the nurse practitioners hired by the District, interviewed approximately 46 applicants for the position of nurse's aide. On the basis of the ratings assigned by the two interviewers, 35 nurse's aides were hired by the District. The majority of these persons had formerly been employed by the City as health aides. No special significance was given to employment by the City, and the District imposed certain threshold qualifications for employment as a nurse's aide that had not been required by the City. Specifically, the District required that applicants have completed a 24 credit school health aide course. This course must be successfully repeated every three years in order to remain employed by the District.

The nurse's aides employed by the District will be assigned to individual schools, and will not regularly rotate between the schools. The school nurses will be assigned to a number of schools and will travel between those schools. When the nurse is not present, the nurse's aide will be responsible for the operation of the school health office. In addition to maintaining the records, performing clerical functions, monitoring students in the health office and performing preliminary evaluations of illnesses and injuries, the nurse's aides will be involved in screening programs conducted by the District. When the nurse is present in the health office, the nurse will be responsible for the operation of the office and the delivery of services to students and faculty. The nurse's aides work will be subject to direction by both the nurse and the building principal.

In anticipation of the District's takeover of the health services program and the employment of nurses and nurse's aides, MTI filed the instant petition on June 16, seeking to accrete the nurse's aides to the existing USA unit.

POSITIONS OF THE PARTIES:

MTI takes the position that the nurse's aides share a community of interests with the other aides employed by the District and should be included in the aides bargaining unit. MTI notes that the function of these aides is to assist professional staff in the delivery of services and that this also describes the function of all other aides employed by the District. While there are technical differences in the work performed, the general nature of the work is identical. These aides will work in the same building as the other aides and will ultimately be supervised by a common supervisor, the building principal. MTI asserts that there is no basis for the establishment of a separate unit of nurse's aides and that the establishment of such a separate unit would constitute undue fragmentation of bargaining units.

MTI urges that the nurse's aides be accreted to the existing unit without a vote among the nurse's aides on whether they desire affiliation to the USA unit. The community of interests shared by these aides and the other aides already included in the unit is clear. The number of nurse's aides to be accreted (35)

4/ All dates hereafter referred to are 1983, unless otherwise noted.

can in no way affect the majority status of the current collective bargaining representative, and therefore a vote would be inappropriate. In support of this proposition, MTI cites previous decisions wherein the Commission declined to allow such a vote because of the possibility that a negative vote would result in a residual group of unrepresented employees not constituting a separate bargaining unit in violation of the policy against fragmentation. (See City of Fond du Lac, 11830 (5/73); Sheboygan Jt. School District, 12897 (7/74).)

The District maintains that the level of education, skills and responsibilities required of nurse's aides is significantly different than that required of other aides in the current unit. The nurse's aides deal with entire school population, while other aides are assigned to specific classrooms or groups of students. Further, the nurse's aides are not under the constant supervision of their immediate superiors because of the division of nurse's time between various schools. Nurse's aides are required to meet continuing education standards, while other aides are not. Finally, nurse's aides are paid in accordance with the standards for their profession, which the District contends is substantially higher of other aides. For these reasons, the District asserts that the nurse's aides are most appropriately placed in a separate unit.

Should the Commission determine that the nurse's aides can appropriately be included in the overall aides unit, the District urges that a vote be held among the aides prior to any accretion. The current unit contains only 209 employees, and the 35 nurse's aides would constitute a significant portion of the overall unit if accreted. The District asserts that these employees should be entitled, by virtue of their numbers and differing interests, to state their preference regarding representation.

DISCUSSION:

The instant matter comes before the Commission as a petition for unit clarification. The unit sought to be clarified was originally the result of a certification and election directed in Madison Board of Education Joint School District No. 8, 12654 (4/26/74). The unit as certified consisted of:

all regular full-time and regular part-time school aides employed by the Madison Board of Education, Joint School District No. 8, including teacher aides, resource center aides, library aides, handicapped children's aides, and counselor aides, but excluding lunch room and playground supervisors, and all other employees. Id. at 1.

Since the certification of this unit, the parties have voluntarily amended and expanded the unit. The collective bargaining agreement between the parties for the period October 16, 1981 through October 15, 1983, contains the following unit description:

. . . all regular full-time and regular part-time school aides employed by the Madison Board of Education, Joint School District No. 8 (Madison Metropolitan School District), directly or indirectly assisting professional staff in the instructional program including teacher aides, resource center aides, library aides, handicapped children's aides, bilingual aides and counselor aides, but excluding lunch room and playground supervisors, and all other employees. (Petitioner's Exhibit 9, Section I(b), at page 1).

In addition, the parties entered into a Memorandum of Understanding on August 21, 1980, by which orthopedic/health aides employed by the District on or after August 19, 1980, would be placed in the aides unit. The positions in dispute were created after the original certification and subsequent voluntary expansions of the USA unit, and were not, therefore, in the contemplation of the parties or the Commission when the present unit was constituted. Under such circumstances, we look to the record to determine whether these aides share a community of interests with those in the USA unit sufficient to justify their inclusion in said unit.

I. COMMUNITY OF INTEREST

In fulfilling its statutory charge to determine appropriate bargaining units, including whether an existing unit should be expanded, the Commission has considered the following factors: 5/

1. Whether the employees in the unit 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 the 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 the wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought to have a separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share the workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

The District asserts that the nurse's aides do not share a sufficient community of interest as measured by the above standards with other members of the aides unit and thus their inclusion therein is unwarranted. The record reveals, however, that the nurse's aides will be working in the same buildings with the other aides and will be subject to the same ultimate supervisor, the building principal. The general function of nurse's aides is to provide services ancillary to those provided by the professional employees in a particular area of specialization, as do the other aides. The District asserts that the nurses aides are distinguishable on the basis of their involvement with all of the students in a given building. The other aides do not work with students outside the classroom or subgroup they are assigned to, the District argues. Even assuming that library aides and counselor aides do not have occasion to deal with the entire population of a given school, the District's arguments in this respect are not convincing. The nurse's aides will deal with those students who become in some way involved with the health office. Thus their potential client population is not materially different than that of resource center aides or any other group of aides whose contact with students is not limited by a specialization within the curriculum. While the pay received by the nurse's aides may be higher than that of other aides, their hours and working conditions do not appear to vary greatly from those of the members of the USA unit. The record reveals no distinction between the aspirations and interests of nurse's aides and other aides sufficient to overcome the statutory policy disfavoring the fragmentation of bargaining units. We conclude that the establishment of a separate unit of 35 nurse's aides would constitute undue fragmentation of bargaining units, and so direct that these aides be included in the current USA unit.

II. THE DISTRICT'S REQUEST FOR A VOTE

The District urges that even if the nurse's aides are not a separate unit, they should be allowed to vote on whether they wish to be included in the overall aides unit. MTI asserts that such a vote would be inappropriate and that the nurse's aides should simply be accreted to the USA unit. We are satisfied that no

5/ Madison Joint School District No. 8, 14814-A (12/76); Appleton Area School District, 18203 (11/80).

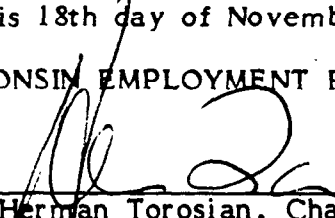
such vote is warranted in these circumstances for there is nothing in the record which suggests that the addition of the 35 nurse's aides to a unit of approximately 209 other employees would jeopardize MTT's majority status. 6/

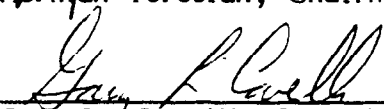
On the basis of the foregoing, we conclude that the nurse's aides in the District should appropriately be included in the USA unit and that there is no necessity of a prior vote. Thus we have amended the unit description to reflect the inclusion of the nurse's aides in the USA unit.

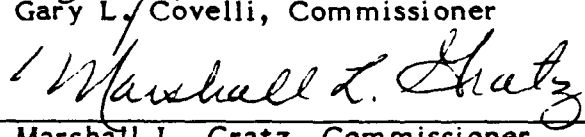
Dated at Madison, Wisconsin this 18th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

6/ See, for example, Joint School District No. 2, City of Sun Prairie, 20459
(3/24/83).