

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
NICOLET FACULTY ASSOCIATION,
WEAC, NEA
Involving Certain Employees of
NICOLET COLLEGE AND TECHNICAL
INSTITUTE
and
WISCONSIN FEDERATION OF
TEACHERS, AFT
Intervenor.

Case 4
No. 34826 ME-2443
Decision No. 23366

Appearances:

Mr. Stephen Pieroni and Mr. Gordon E. McQuillen, Staff Counsel; Wisconsin Education Association Council, 101 West Beltline Highway, P.O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Petitioner.
Nash, Podvin, Detlefsen, Tuchscherer & Weymouth, S.C., Attorneys at Law, 170 Third Street North, Wisconsin Rapids, Wisconsin 54497-0997, by Mr. Guy-Robert Detlefsen, Jr., appearing on behalf of the Employer.
Mr. Troy Brazell, National Representative, American Federation of Teachers, c/o Wisconsin Federation of Teachers, 2021 Atwood Avenue, Madison, Wisconsin 53704, and on the reply brief, Shneidman, Meyers, Dowling, Blumenfield & Albert, Attorneys at Law, P.O. Box 442, Milwaukee, Wisconsin 53201-0442, by Mr. Timothy E. Hawks, appearing on behalf of the Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DIRECTION OF ELECTION

Nicolet Faculty Association, WEAC, NEA, having on April 3, 1985, 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 Nicolet College and Technical Institute; and hearing in the matter having been conducted on May 4, July 30, July 31 and August 1, 1985, at Rhinelander, Wisconsin, before Examiner James W. Engmann, a member of the Commission's staff; and the motion of Wisconsin Federation of Teachers, AFT, to intervene in this matter having been granted at the hearing; and a transcript of the proceedings having been received on September 17, 1985; and the parties having had opportunity to file briefs and reply briefs, the exchange of which was completed on November 27, 1985; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Nicolet Faculty Association, WEAC, NEA, herein referred to as WEAC or the Petitioner, is a labor organization which has its principal offices at 4620 West North Avenue, Milwaukee, Wisconsin 53208.
2. That the Wisconsin Federation of Teachers, AFT, herein referred to as WFT or the Intervenor, is a labor organization which has its principal offices at 2021 Atwood Avenue, Madison, Wisconsin 53704.
3. That Nicolet College and Technical Institute, herein referred to as the District or the Employer, is a municipal employer which operates an adult vocational and technical education program in the Rhinelander area, and has its principal offices at Highway G South, Rhinelander, Wisconsin 54501.

4. That on April 3, 1985, WEAC filed a petition for election of municipal employees employed by the District in the following unit it alleged appropriate:

All regular part-time and regular full-time professional staff employees excluding managerial, supervisory, confidential and all other employees employed by the municipal employer.

that prior to hearing WEAC amended the petition to limit regular part-time professional staff employees to those who are employed 50% or more of a full schedule; that the WFT concurred in this unit description as amended by WEAC; and that the District argues that the appropriate unit should include all regular professional staff including those who work less than half time.

5. That the parties agreed that approximately 63 instructors and other professional staff who are employed 50% or more of a full schedule should be included in the unit; and that the parties agreed that the following positions should be excluded from the unit: District Director; the Deans of Community Service, Instruction and Student Advising and Counseling; the Directors of Administrative Affairs, Outreach Education and the Learning Resources Center; and the Coordinators of Hospitality Services and Community Services.

6. That the WFT alleged that the following Division Chairs and current occupants should be included in the unit: Arts, Humanities and Social Sciences, Edward Oppen; Business Education, Robert Gerner; Science and Math, Glenn Sansburn; Technologies and Logging, James Orovecy; and Consumer and Hospitality Services, Rose Nelson; that the WFT alleged that the following positions and current occupants should be included in the unit: Coordinator of Occupational Education Projects and Director of Grants, Thomas Maney; and Director of the Instructional Learning Center, Jerry Kerner; that WEAC and the District alleged that these positions should be excluded as supervisors; that the District also alleges that these positions should be excluded on the basis of managerial status; and that the District further alleged that the Division Chairs and the Coordinator of Occupational Education Projects and Director of Grants should be excluded as confidential employees.

7. That WEAC and the WFT allege that the following positions and current occupants should be included in the unit: Director of the Mining Import Center, Patricia Travis; Publications Coordinator, Linda Boyd; Director of the Women's Resource Bureau, Susan Dion; Director of the Native American Center, Michele LaRock; Director of the Day Care Center, Judith Berbey, and Director of Financial Aids, William Peshel; that the District alleges these positions should be excluded on the basis of both supervisory and managerial status; and that the District alleges that Publications Coordinator Linda Boyd should also be excluded as a confidential employee.

8. That of the approximate 300 instructors employed by the District, approximately 60 receive an appointment of 50% or more and approximately 240 receive an appointment of less than 50%; that those instructors who are employed 50% or more are called the "resident faculty"; that the parties agree that these individuals should be included in the unit; that those instructors who are employed less than 50% are called the "special interest faculty"; that the Petitioner and Intervenor assert these employees should be excluded from the unit because they do not share a community of interest with the resident faculty; and that the District asserts that the resident faculty and the special interest faculty do share a community of interest and should be included in the same unit.

9. That the majority of resident faculty have masters degrees in the academic areas they are teaching; that the majority of the special interest faculty do not have master's degrees; that the resident faculty all teach academic courses for which the student receives college credit; that the majority of the special interest faculty teach non-academic credit courses and special interest non-credit courses; that the duties of the resident faculty include instructing students, assisting and advising students outside class, developing curriculum, serving on faculty committees and performing administrative duties as assigned; that the duties of the special interest faculty include instructing students, but requires only limited advising of students and performing of administrative tasks; that the special interest faculty is not involved in curriculum development or faculty committees; that the resident faculty are hired on a yearly contract with a stated salary for the 36 week school year; that the lowest paid resident faculty person makes over \$12,000 per year; that the special interest faculty are hired as

needed on a course-by-course basis; that said hiring is contingent upon the enrollment of a sufficient number of students in the class; that special interest faculty are paid on an hourly rate; that the vast majority of special interest faculty make less than \$3,000 per year; that the resident faculty receives the following fringe benefits: 15 school days of health leave per contract year with full pay which may be accumulated to 120 school days; an income protection plan, equal to two-thirds of the regular monthly salary, paid by the District; group life insurance with 38% of premium paid by the District; health and major medical insurance and dental insurance paid by the District; and Wisconsin Retirement System with District paying the 5% employee contribution; that the special interest faculty receives no fringe benefits; that the resident faculty have their own office space and teach many of their classes during the day on campus; that the special interest faculty do not have their own office, and many of these classes are taught at night and off campus; that resident faculty are hired following a recommendation of a screening committee appointed by and reporting to the District Director; that special interest faculty are hired following a recommendation of the Division Chair; that the Division Chair supervises both the resident and special interest faculty; that the resident faculty are currently represented through a Faculty Assembly which makes recommendation to the District Director on education and personnel policies, such as wages, hours and conditions of employment; that no such body exists to represent the special interest faculty; that certifying a unit of professional employees employed 50% or more would not cause undue fragmentation; and that the resident faculty do not share a community of interest with the special interest faculty.

10. That at the time of the instant hearing the District Director was Richard Brown; that the Deans of Community Services, Instruction and Student Advising and Counseling and the Director of Administrative Affairs report directly to him; that in addition to others, the District Director supervises the Coordinator of Occupational Education Projects/Director of Grants, Thomas Maney, the Director of the Mining Impact Center, Patricia Travis, and the Publications Coordinator, Linda Boyd; that the Dean of Instruction is Robert Steger; that Dean Steger supervises the divisions and their chairs as identified in Finding of Fact 6; that in addition to others Dean Steger supervises the Director of the Instruction Learning Center, Jerry Kerner, the Director of the Women's Resource Bureau, Susan Dion, and the Director of the Native American Center, Michele LaRock; that the Dean of Student Advising and Counseling is Anthony Vissers; and that in addition to others, Dean Vissers supervises the Director of the Day Care Center, Judy Berbey, and the Director of Financial Aids, William Peshel.

11. That in all cases of the hiring of support and professional staff with a 50% or more appointment, the District Director appoints a screening committee to review applications, interview candidates and develop a recommendation to hire; that said recommendations are almost always concurred in by the appropriate Dean and accepted by the District Director; that a representative screening committee would include a first line administrator (e.g., Division Chair, Director of Center, Area Coordinator) as Chair, at least one person from the division or center for which the person is being hired, and at least one person from outside the division or center; that for an instructor, the typical committee would include the appropriate Division Chair as Committee Chair, one faculty member from the same or related academic area, and one faculty member from outside the division; that for the professional staff, the typical committee would include the appropriate director or coordinator as Committee Chair, one professional staff from the same center or division and one professional staff from outside the division; that for support staff, the Division Chair or Director would serve as Committee Chair with at least one support person from the same or related area and one other person from outside the area comprising the committee; and that for all positions in dispute in this case, the foregoing constitutes the only input said position has in hiring unless stated otherwise.

12. That in terms of budgeting, the various divisions and centers in the institution follow similar procedures; that the District Director through the Director of Administrative Affairs advises the various divisions and centers on the procedures to be used in budgeting; that each Division Chair, Director and Coordinator secures budget requests from each member of the division or center and combines the requests into a division or center budget; that these budget requests are forwarded to the appropriate Dean; that the District Director then meets with the Deans of Community Services, Instruction and Student Advising and Counseling, the Coordinator of Occupational Education Projects/Director of Grants, and the Director of Administrative Affairs to review the budget requests; that following

said meeting, the various Deans go back to the Division Chairs, Directors and Coordinators to get input into refining the budget requests; that it is the Deans of Community Services, Instruction and Student Advising and Counseling, together with the Coordinator of Occupational Education Projects/Director of Grants and the Director of Administrative Affairs that determine the original budgets that will then be submitted to the District Director; and that, except as noted in Finding 13 regarding Maney, below, Division Chairs, Directors and Coordinators do not have authority to transfer funds for purposes different than originally budgeted without the approval of the appropriate Dean, and in terms of management policy, it is the Deans of Community Services, Instruction and Student Advising and Counseling, together with the Coordinator of Occupational Education Projects/Director of Grants and the Director of Administrative Affairs that participate to a significant degree in the formulation, determination and implementation of management policy.

13. That Thomas Maney has been Director of Grants and Coordinator of Occupational Education Projects since 1973; that as Director he develops, coordinates and fiscally administers all state and federal vocational and grant funds received by the College; that as Coordinator he administers the daily and fiscal functions of the College's Apprenticeship Program and Fire Training Program and he conducts research related to the development of vocational programming and occupational program preparation and development; that 60% of his time is spent on work related to the fiscal administration of state and federal funds; that in this regard Maney prepares the various plans and reports required by the funding agencies, coordinates the allocations of said funds in the college, supervises the expenditures of these funds, establishes the audit procedures and evaluates the audit of those funds yearly; that in addition to his management of state and federal funds, Maney creates budgets for his own office, the Apprenticeship Program, the Fire Training Program and from special occupational offerings; that the total for these budgets exceeds \$150,000; that in addition to submitting these budgets to the District Director, Maney meets with the three Deans and the Director of Administration Affairs to finalize the budget for the entire institution that is recommended to the District Director; that Maney is assisted in his duties by Secretary Marguerete Szostak; that although she is assigned 100% to Maney's office, 20% of her time is devoted to work for the District Director; that Maney's involvement in her hiring is as outlined in Finding of Fact 11 above; that he never had occasion to discipline the Secretary; that he informally evaluates her on a yearly basis but said evaluation is not reduced to writing; that he does assign some work to her, although she works independently; that as Coordinator, Maney does subcontract from the District Consortium for instructors in the apprenticeship program; that these instructors are shared with other districts; that the full-time Fire Service Coordinator Instructor, David Shirley, reports to Maney; that Shirley teaches many of the classes and oversees part-time instructors; that Maney will evaluate the full-time Fire Service Coordinator Instructor and the part-time instructors; that Maney participates in the formulation, determination and implementation of management policy and has the effective authority to commit the District's resources; that Maney does not possess supervisory authority in sufficient combination and degree to be found a supervisor; and that Maney does not have access to, knowledge of or participate in matters related to labor relations.

14. That Patricia Travis has been Director of the Mining Impact Center since June, 1980; that her appointment is 60% Director and 40% Instructor of Geology; that the role of the Mining Impact Center is to ascertain and develop programs in conjunction with the mining industry; that to accomplish this, Travis contacts the mining industry to determine what types of employment are needed and what types of labor are available in the local area; that then Travis looks to see whether the school can provide appropriate programs to fill the industry's labor needs; that the only other person employed in the center is Mary Gannering; that Gannering is a secretary assigned half-time to the center and half-time to student services; that Travis was on the three-person screening committee that recommended the hiring of Gannering; that on one occasion Travis orally reprimanded a previous secretary; that Travis has authority to issue a written reprimand; that Travis does not have authority to impose more severe discipline; that Travis prepares a written evaluation of Gannering once a year; that much of Gannering's work is done independently of direct supervision; that Travis is paid \$34,000 for a 45 week year; that Gannering is paid \$10,000 for the year; that Travis submits a budget of \$10,000, not including salaries, to the District Director for approval; that this amount has been consistent from year to year; that once established, she is not

able to transfer money from one use to another without approval of the District Director; that Travis does not participate in a significant manner in management policy nor does she have the effective authority to commit the resources of the employer; and that Travis does not possess supervisory authority in sufficient combination and degree to warrant her position being considered supervisory.

15. That Linda Boyd has held the half-time position of Publication Coordinator since January 1974; that Boyd's duties include preparing news releases and publications for the College; that in preparing news releases, she bases some releases on information provided to her and other releases on her independent research; that news releases cover such topics as events occurring on campus, course offerings, new programs and features about the College; that in preparing publications for the College, most are requested by a division or center within the College; that the division or center informs Boyd of the type of publication it wants and the amount budgeted for said publication; that Boyd solicits bids for the publication from printers; that in the vast majority of cases, the lowest bid is accepted; that on several occasions where the bids were within five dollars but under the budget limit set by the division or center, Boyd has selected the higher bid based on her past experience with the printers and her assessment of the quality of their work; that Boyd then designs the publication, writes the material, secures the photographs and prepares the layout for the printer; that she and the division or center requesting the publication review the proofs before the publication is printed; that the Publications Coordinator is assisted by the Assistant to the Publications Coordinator and the College Photographer; that the occupant of the position of Assistant to the Publications Coordinator is Patt Massino; that Massino began her work two weeks prior to the hearing in this matter; that Massino works five hours per week; that Massino's main duty is to write press releases; that the position of College Photographer is a student position and not a permanent position; that work study students and student assistants are limited to working no more than twenty hours per week; that Boyd was involved in the hiring of Massino as outlined in Finding of Fact 11; that Boyd acts as a committee of one in recommending a student for the position of College Photographer; that said recommendations has always been followed by the District Director; that on one occasion she gave an oral reprimand to a college photographer; that in supervising the production of news releases and publications, the Publications Coordinator does direct and assign the assistant and the college photographer; that Boyd does not participate in a significant manner in the formulation, determination or implementation of management policy; that she does not establish a budget; that funding for various publications comes from the department or division requesting the publications; that Boyd does not have authority to allocate funds for purposes different from which they were allocated; and that Boyd does not have the sufficient combination and degree of statutory criteria so as to be deemed supervisory.

16. That Boyd meets with the District Director at least once a month; that neither the District Director nor any other representative of the District discusses with her the College's strategy or position in collective bargaining, contract administration or grievance or other litigation with its collective bargaining units; that on one occasion the District Director informed Boyd that the College was considering terminating a teacher; that the District Director informed Boyd of this because the teacher in question served on a committee working in public relations with Boyd who chairs the committee; that Boyd did not adjust her work or use this information in any manner; that it was not necessary that Boyd be given this information; and that Boyd does not have access to, knowledge of or participate in matters relating to labor relations.

17. That prior to the early 1970's, Dean of Instruction Robert Steger supervised the entire faculty; that with the growth of the College, four divisions were created in the early to mid 1970's to assist Dean Steger; that the Dean and the faculty of each division developed a system for voting for the person it recommended as Division Chair; that each system was recommended by the Dean and approved by the District Director; that since that time, these four divisions have held votes at regular intervals to recommend a faculty member as Division Chair; that the Dean has always concurred in the recommendation and the District Director has always approved the recommendation; that the Dean as well as the District Director have kept the authority to reject the recommendation of a division faculty; that the Dean created a fifth division in 1982 called the Consumer Education and Hospitality Services Division; that this division was created by moving some programs from the Business Education Division and combining them with the Home Economics program which had been supervised by a coordinator; that the

Dean recommended and the District approved the appointment of Rosemarie Nelson as Division Chair without any vote of the division faculty; and that the Dean is currently considering eliminating the vote of the division faculty from the appointment process for the other four division chairs in the future.

18. That the duties and responsibilities of the five Division Chairs are similar; that they are involved in the hiring of resident faculty and support personnel as outlined in Finding of Fact 11 above; that they recommend to the Dean the hiring of special interest faculty without use of the screening committee; that said recommendations to hire are almost always approved; that Division Chairs have authority to issue written reprimands; that although the number of times where more severe discipline has been imposed have been few, Division Chairs have recommended firing and said recommendations have been accepted and acted upon; that the Division Chairs meet each year with each resident faculty member for the purpose of evaluation; that the Division Chairs base part of their evaluation on direct observation of the faculty member's teaching; that part of the evaluation is based on evidence which the instructor provides, such as self, peer and student evaluations; that the Division Chairs write an assessment report based on the entire evaluation which is forwarded to the Dean; that the teaching duties of the Division Chairs are reduced to less than half-time; that the contract year for Division Chairs is lengthened from 36 weeks to either 45 or 48 weeks; that the Division Chair is paid at the same rate as when he or she taught, though the salary is higher because of the longer contract; that in addition to the Chair, each division consists of at least seven employees to over twenty employees; that Division Chairs have the authority to effectively recommend the work assignments for the other employees of the division; that the Division Chairs have recommended employees for discretionary merit pay, and said recommendations were followed; that the Division Chairs meet regularly with the Dean of Instruction; that Division Chairs have limited access to some personnel files; that the Division Chairs do not participate to a significant degree in the formulation, determination and implementation of management policy; that Division Chairs possess supervisory authority in sufficient combination and degree to render them supervisors; and that Division Chairs do not have access to, knowledge of or participate in matters relating to labor relations.

19. That Jerry Kerner has been Director of the Instructional Learning Center for eight years; that the Instructional Learning Center provides individualized instruction in basic skills to students with special needs in the areas of reading, writing and math; that the Center also provides a language lab and test administration; that Kerner teaches one course in a semester which accounts for 20% of his appointment; that intake of students and other student contract accounts for 10 to 20 percent of his time; that the remaining amount of his time is spent in administering the Center; that he is paid \$31,000 for a 45 week contract; that the other full-time positions in the Center are occupied by secretaries Lois Grunst and Merry Fish and instructors Pat Folgert and Evelyn Miller; that the Center operates the College's Outreach Learning Centers; that the Outreach program is staffed full-time by Jim O'Toole, an instructor; that Kerner is involved in hiring full-time staff as outlined in Finding of Fact 11 above; that Kerner has authority to issue written reprimands; that Kerner has never had to discipline nor recommend the discipline of any employee; that of the full-time staff, Kerner evaluates everyone except Folgert who is under a special project and is evaluated by the appropriate Division Chair; that in any given semester, four or five instructors are assigned part-time to the Center; that based on student enrollment in the Center's programs, Kerner determines the Center's need for part-time staff and formally requests such staff from the Dean of Instruction; that the Dean meets with Kerner and the appropriate Division Chair to determine who will be assigned to the Center; that he evaluates the two part-time instructors who work under projects administered by the Center; that the other part-time instructors are evaluated by their Division Chair; that Kerner's involvement in budgeting is as outlined in Finding of Fact 12 above; that Kerner does not participate in the formulation and implementation of management policy; and that Kerner possesses supervisory authority in sufficient combination and degree to be a supervisor.

20. That Susan Dion has been Director of the Women's Resource Bureau for three years; that at the time of hearing in this matter, Dion was on a sabbatical leave; that Theresa Mayfield Netyel is acting Director; that as Director Dion is responsible for planning, implementing and evaluating programs which meet the special needs of women; that in addition to the Director, the only other full-time employee in the Center is a secretary; that five part-time persons are employed in the Center with the job title of Specialist; that the educational background of

these five specialists range from high school education to master's degree; that Dion has been involved in the hiring of those specialists hired since she became Director as outlined in Finding of Fact 11 above; that the Dean has not informed Dion what her authority is related to discipline of employees; that Dion has not disciplined anyone as Director; that she has authority to issue written reprimands without approval of the Dean; that Dion prepares written evaluations of the secretary and specialists on a yearly basis; that Dion directs and assigns the employees in their work; that Dion's teaching assignment is 25% in the area of history; that as Director she also teaches special interest courses on women's issues; that Dion's involvement in budgeting is as outlined in Finding of Fact 12 above; that Dion does not participate in a significant degree in the formulation, determination and implementation of management policy; and that Dion possesses supervisory authority in sufficient combination and degree to be a supervisor.

21. That Michele LaRock has been Director of the Native American Center and Support Services since 1981; that for most of her tenure she reported to and was supervised by the Dean of Community Services; that shortly before the hearing in this matter, responsibility for the Center was transferred from the Dean of Community Services to Dean of Instruction Robert Steger; that the only other person employed full-time in the Center is Billie Jori; that Jori has been the secretary since before 1981; that one work-study student is employed in the Center each semester; that usually the Financial Aid Advisor sends a work-study student to the Center for the position; that LaRock is not involved in any other hiring; that LaRock does prepare a written evaluation of Jori once a year; that LaRock does not keep a personnel file on Jori; that the Center is located on the second floor of the Science Center; that the majority of her time is taken up with student contact; that LaRock advises students on admissions, financial aids, housing, day care and other support services in the school; that LaRock also holds regular office hours on the reservations in the District in order to recruit students and work with Tribal representatives in setting up Tribal training programs; that LaRock is paid \$18,500 for the year and Jori is paid substantially less; that the Center is funded by two federal projects; that LaRock's involvement in budgeting is as outlined in Finding of Fact 12 above; that LaRock does not participate in a significant manner in the formulation, determination and implementation of management policy; and that she does not possess supervisory authority in sufficient combination and degree to be considered a supervisor.

22. That Judith Berbey has been Director of the Day Care Center since July, 1981; that she meets with Dean Vissers at least once a week; that at said meetings Berbey makes recommendations for the operation of the Day Care Center and the Dean approves or disapproves said recommendations; that Berbey developed a policy handbook for the Day Care Center which lists the basic goals of the Center; that said handbook is based on the policy guidelines and licensing codes of the Wisconsin Department of Health and Social Services; that in addition to Berbey, the other full-time position in the Day Care Center is Educational Support Specialist held by Michelle Conrath; that at the time of hearing a new position of infant-toddler teacher had been created; that Berbey would be involved in the hiring for this position as outlined in Finding of Fact 11 above; that in addition to these full-time positions, several part-time work-study students and job-training persons work in the Center; that she informs the referring agency of how many persons she needs; that the referring agency will send her that number of candidates; that she meets said candidates and generally accepts them; that while she has the authority to turn down candidates, this occurs seldom, and only after Berbey discusses the concerns with the referring authorities; that Berbey does not have authority to transfer nearly all of employees; that Berbey has never disciplined an employee; that if a situation required discipline, other than an oral reprimand, Berbey would not undertake the discipline but would involve the Dean; that Berbey does not normally evaluate Conrath, the work-study students or the job training persons; that any evaluation that is done is done informally as an on-the-job learning process which is not reduced to writing either at the time or at the end of the year; that both Berbey and Conrath are involved in informally evaluating the part-time staff; that Berbey recommended Conrath for discretionary pay one time and it was approved; that Berbey directs the day-to-day operation of the Day Care Center; that Berbey does not set her hours or that of the full-time support staff; that their hours are set in consultation with the Dean; that Berbey schedules the part-time staff; that Berbey and full-time staff need approval of the Dean to take vacation; that Berbey and Conrath develop the curriculum of the Center together; that Berbey orders materials and supplies, prepares various reports, schedules the children in the center, interacts with parents and coordinates the activities of the part-time people; that Berbey spends 20% of her

time teaching child care courses with 20% of her salary paid out of instructional funds; that Conrath spends the vast majority of her time interacting with the children and directing the part-time staff; that Berbey has a master's degree and is paid \$21,000 for a 12-month contract, and that Conrath has an associate degree and is paid \$15,000 for a 12-month contract; that Berbey's involvement in budgeting is as outlined in Finding of Fact 12 above; that Berbey does not participate in the formulation, determination or implementation of management policy; and that Berbey does not possess supervisory authority in sufficient combination and degree so be found a supervisor.

23. That William Peshel has been Director of Financial Aids since 1978; that the Office of Financial Aids also includes the Financial Aids Advisor and Secretary, full-time positions held by Arthur Baclow and Denise Balduc, respectively, and the Veteran's Advisor, a half-time position held by Allan Janssen; that Peshel was involved in the hiring of all three as outlined in Finding of Fact 11 above; that Peshel has never disciplined an employee; that because the Dean retains authority to discipline employees, Peshel would inform the Dean if he believed discipline of an employee might be appropriate who would determine the necessary discipline; that on one occasion, the Dean observed what he thought was a lack of attention to posted hours by the previous Financial Aids Advisor; that it was the Dean who investigated the matter by talking to Peshel and the previous Advisor; that it was the Dean who determined discipline was not appropriate; that Peshel does informally evaluate the Financial Aids Advisor and the Veteran's Advisor but such evaluations are not reduced to writing; that Peshel does a written evaluation of the Secretary once a year; and that he has recommended employees for discretionary merit pay increases and said recommendations were followed; that in addition to evaluating Peshel, the Dean evaluates the Advisor; that Peshel does not keep personnel files regarding any employees; that the Dean can discipline any employee of the Financial Aids Office without conferring with the Director; that Peshel spends 40 to 50 percent of his time counseling students regarding financial aid; that the remainder of his time is spent applying for state and federal money for financial aid, preparing federal, state and district reports, attending various financial aid meetings and conferences, dealing with the Department of Education and the State Higher Education Aid Board, working with faculty in the placement of work-study students and giving presentations on the availability and application process of financial aid to staff, students and prospective students; that Peshel spends 10% of his time directing the work of the other employees in the Financial Aids Office; that Peshel is paid \$26,000 for the year and the Advisor is paid \$15,000 for the year; that said difference in pay appears less due to Peshel's supervising duties than to other differences in the qualifications and responsibilities of the positions and the fact that the Advisor formerly was a support staff position which was upgraded; that the Secretary is a support staff position which is paid \$10,000 for the year; that the Veteran's Advisor is a support staff position which is half-time and is paid between \$4,500 and \$5,000 for the year; that Peshel can approve vacation for the employees in the Financial Aids Office; that Peshel's involvement in budgeting is as outlined in Finding of Fact 12 above; that Peshel does not participate to a significant degree in the formulation, determination or implementation of District policy; and that Peshel does not have the factors in sufficient combination and degree so as to be found a supervisor.

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

CONCLUSIONS OF LAW

1. That "all regular full-time and all regular part-time professional staff employees employed 50% or more by Nicolet College and Technical Institute, excluding managerial, supervisory, confidential and all other employees," constitutes an appropriate collective bargaining unit within the meaning of Sec. 11170(4)(d)2.a., Stats.

2. That a question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., presently exists among the employees of Nicolet College and Technical Institute in the appropriate collective bargaining unit described in Conclusion of Law 1 above.

3. That the individuals occupying the positions of Division Chairs, Director of the Instructional Learning Center and Women's Resource Bureau are neither managerial nor confidential employees, but they are supervisory employees

and, therefore, are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats., and are excluded from the unit.

4. That the occupant of the positions of Coordinator of Occupational Education Projects/Director of Grants is neither a supervisory nor a confidential employee but is a managerial employee and, therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats, and is excluded from said unit.

5. That the occupants of the positions of Director of Mining Impact Center, Director of the Native American Center, Director of the Day Care Center and Director of Financial Aids are neither managerial employees nor supervisors and, therefore, they are municipal employees within the meaning of Sec. 111.70(1)(i), Stats., and are included in said unit.

6. That the occupant of the position of Publications Coordinator is neither a managerial employee nor a supervisor, nor is she a confidential employee, and therefore, she is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., and is included in said unit.

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

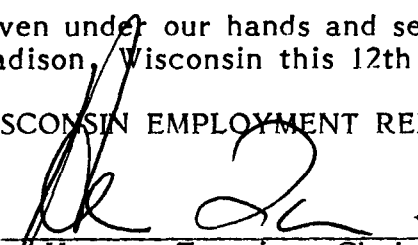
DIRECTION OF ELECTION

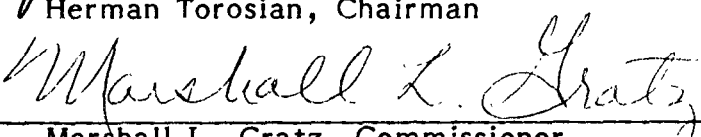
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional staff employees employed 50% or more by Nicolet College and Technical Institute, excluding managerial, supervisory, confidential and all other employees, who were employed by Nicolet College and Technical Institute on March 12, 1986, except such employees as may prior to election quit their employment or be discharged for cause, for the purposes of determining whether a majority of said employees voting desire to be represented by the Nicolet Faculty Association, WEAC, NEA, or by the Wisconsin Federation of Teachers, AFT, or by neither of said organizations for the purpose of collective bargaining with Nicolet College and Technical Institute on wages, hours and conditions of employment.

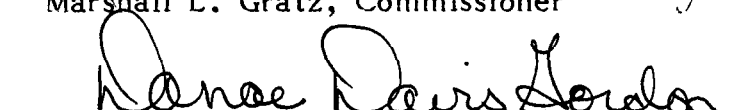
Given under our hands and seal at the City of
Madison, Wisconsin this 12th day of March, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

NICOLET COLLEGE AND TECHNICAL INSTITUTE

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

The District

The District contends that the 240 special interest faculty should be included in the unit with the District's 63 other professional staff employees because they share a community of interest with the 60 resident faculty in that (1) they have the same basic educational background, (2) they teach and are supervised in the same manner, (3) they have common work and office space, and (4) they keep office hours. The District further contends that to exclude the special interest faculty would result in undue fragmentation of the bargaining unit.

The District argues that all 13 positions in dispute should be excluded from the unit because they all are supervisory and managerial in that the individuals occupying these positions have authority (1) to effectively recommend the hiring, disciplining and discharging of employees, (2) to evaluate employees, (3) to direct the employees and assign work to them, (4) to exercise independent judgment and discretion in supervising employees, (5) to participate in the formulation, determination and implementation of management policy, and (6) to commit the District's resources.

In regard to the Division Chairs, the District also argues that the Dean of Instruction could not handle the administrative load if the entire resident faculty reported to him under a concept of shared governance, as argued by the Intervenor, instead of reporting to the Division Chairs as supervisors.

In regard to the Publications Coordinator, the District argues that the occupant of this position is a confidential employee because she has been confidentially informed in the past that a particular instructor might be terminated. In its reply brief, the District argues for the first time that Division Chairs are confidential employees in that they create confidential evaluations of faculty and have access to faculty personnel files. In its reply brief the District also argues for the first time that the Director of Grants/Coordinator of Occupational Education Projects is a confidential employee because he deals with confidential budgetary and planning information.

The Petitioner

The Nicolet Faculty Association, WEAC, NEA contends that the special interest faculty should be excluded from the unit because they do not share a community of interest with the resident faculty in that (1) they teach enrichment as opposed to academic courses, (2) they are not required to have a teaching certificate, (3) they are paid hourly and receive no fringe benefits, and (4) they have historically been treated as a separate group by the District. The Petitioner further contends that given the size of the two groups of employees, the unit sought will not result in undue fragmentation of bargaining units.

As for the Division Chairs, and the Director of the Instructional Learning Center, the Petitioner agrees with the District that the occupants of these positions are supervisors. As for the Director of Grants/Coordinator of Occupational Education Projects, the Petitioner agrees with the District that the occupant of this position is a managerial employee.

As for the Publications Coordinator and the Directors of the Mining Impact Center, Women's Resource Bureau, Native American Center, Day Care Center and Financial Aids, the Petitioner argues these positions should be included in the unit because these persons have de minimus supervisory authority, that the reason they have any authority at all is that the employer has chosen not to employ a personnel officer, that instead the employer has chosen to spread out the

supervisory duties so that many employees act as personnel officers, that by doing so the individuals involved may be denied the right to bargain collectively, even though the bulk of their duties are non-supervisory, and that there are supervisors above those positions in dispute who can function as supervisors while keeping the ratio of supervision to employee at a manageable level. In addition the Petitioner argues that the occupants of these positions are not managers in that they are not involved in policy matters to a significant degree nor do they have authority to commit the District's resources.

As for the Publications Coordinator, the Petitioner contends that the occupant of this position does not participate in confidential matters related to labor relations.

The Intervenor

The Wisconsin Federation of Teachers concurs with the Petitioner that the collective bargaining unit should include only professional staff employees who have an appointment of 50% or more. The intervenor also concurs with the Petitioner's position that the Publications Coordinator and the Directors of the Mining Impact Center, Women's Resource Bureau, Native American Center, Day Care Center and Financial Aids should be included in the unit.

As for the Director of Grants/Coordinator of Occupational Education Projects, the Intervenor argues that the occupant of these positions should be included in the unit because he is not a supervisor, managerial or confidential employee, that he has a part-time secretary who could be supervised by another supervisory individual employed by the District, that he spends the majority of his time in developing and coordinating grant money, that he works with training, apprenticeship and occupational programs which are part of the College's instructional program, that he does not have significant authority to shift funds or to manage resources, and that he has no access to confidential information. The Intervenor also argues that the Director of the Instructional Learning Center should be included in the unit.

As for the Division Chairs, the Intervenor argues they should be included in the unit because they are not supervisors, managerial or confidential employees; that they are lead professionals elected by their colleagues; that they do not have authority to effectively recommend hiring, discipline or discharge; that in hiring they are one vote on the screening committee; that the actual authority to discipline or discharge rests at the level of Dean or above; that they do not evaluate but facilitate the process of instructor self-evaluation; that the Dean of Instruction is able to supervise the resident faculty because of the elaborate system of committee and collegial recommendations that make up the shared governance of the institution; that the Division Chairs are not paid more than the faculty; that they spend a significant amount of time performing faculty duties; that they do not participate in management policy; that they are not able to commit the District's resources; and that they have no greater access to confidential information than any other faculty member who participates in shared governance.

DISCUSSION

I. Composition of the Unit

The Commission determines whether a petitioned for unit is appropriate based on the following criteria:

1. Whether the employees in the unit share a community of interest distinct from that of other employees.
2. Whether the duties and skills of the employees in the unit sought are similar with the duties and skills of other employees.
3. Whether the wages, hours and working conditions of the employees in the unit sought are similar to the wages, hours and working conditions of other employees.

4. Whether the employees in the unit sought have common supervision with other employees.
5. Whether the employees in the unit sought have a common workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Whether the unit sought has a historical bargaining relationship with the employer distinct from that of other employees. 1/

As noted above, the Petitioner and Intervenor seek a unit limited to professional staff employees employed 50% or more. The District argues that the unit also should include the special interest faculty, those that teach less than 50%, because said faculty share a community of interest with the resident faculty those that teach 50% or more, and other professional staff employees.

It is true that the special interest faculty members teach students and do so at times in the District's classrooms, as is true of the resident faculty (though a greater proportion of the classes taught by resident faculty are on campus). It is also true that the supervision of both groups is done by the appropriate Division Chair. However these similarities are outweighed by the substantial differences between the two groups.

The resident faculty are responsible for curriculum development and faculty committee service, whereas the special interest faculty is not. The resident faculty are certified teachers, most of whom hold Masters Degrees. This is not true of the special interest faculty. The resident faculty teaches academic courses for college credit, whereas the vast majority of special interest faculty teach enrichment courses.

The resident faculty are hired under yearly contracts for which they receive a set salary and the total fringe benefit package. The special interest faculty are hired on a course-by-course basis pending sufficient enrollment. They are paid at an hourly rate much lower than that of the resident faculty, and they do not receive any fringe benefits.

In addition to being involved in the college governance through faculty committees, the resident faculty has also made recommendations to the District regarding professional and personnel matters through an elected body called a faculty assembly. This faculty assembly represents professional staff employees employed 50% or more in this regard. The special interest faculty has no such representative body.

The unit as proposed in the amended petition would consist of over 60 employees. Since the special interest faculty number over 240, including special interest faculty would establish a unit which would submerge the unique interests and aspirations of the resident faculty.

For these reasons we believe that the resident faculty and the special interest faculty do not share a community of interest and that "all regular full-time and all regular part-time professional staff employees employed 50% or more by Nicolet College and Technical Institute, excluding managerial, supervisory, confidential and all other employees" constitutes an appropriate collective bargaining unit. 2/

II. Division Chairs

The District argues that the Division Chairs should be excluded from the unit because all five of them are supervisory, managerial and confidential employees.

1/ Mid-State VTAE District No. 14, Dec. No. 14526-A (WERC, 5/85).

2/ Board of Vocational, Technical and Adult Education District No. 6, Dec. No. 10810 (WERC, 2/72).

The Petitioner agrees with the District that the Division Chairs should be excluded as supervisors, but disagrees with the District that the Division Chairs are managerial or confidential employees. The Intervenor argues that all five Division Chairs should be included in the unit.

A. Supervisory Status

In determining whether a position is supervisory in nature, the Commission has consistently considered the following factors.

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment and discretion exercised in the supervision of employees. 3/

The basis of the Intervenor's argument is that Nicolet College and Technical Institute developed a style of institutional "shared" governance closer to that found in the University of Wisconsin system than to the less democratic and more bureaucratic form of management common to other vocational-technical institutions where the superior-subordinate relationship between supervisors and employees is carefully delineated. Thus, the main thrust of the Intervenor's argument is that Division Chairs are lead-professionals elected by their peers to present the faculty's recommendations and to represent the Division before the Deans, to lead the faculty in its interaction in the elaborate system of committee and collegial recommendations making, to act as a facilitator in each faculty member's process of self-evaluation, and to supervise the activities, not the employees, of the Division.

To show the system of shared governance and responsibility which is in place in the District, the Intervenor points to the committee screening system of having resident faculty outlined in Finding of Fact 11 above and to the election of Division Chairs by the resident faculty. Dean of Institution Robert Steger testified that the screening committee process was developed as a part of the College's affirmative action plan, not as part of a shared governance idea. The Dean also testified that Division Chairs were created to assist him in his role as overall supervisor of the faculty, that the vote served as a recommendation to him and that he retained authority to reject the recommendation. The evidence supports this view.

Even though the Division Chairs are only one vote out of a committee that

In addition, while the need for discipline has been slight, the record is clear that the Division Chairs have recommended discipline, including two instances of recommending discharge, and these recommendations were followed. While the ultimate authority to discharge remains with the Board, the Division Chairs have authority to effectively recommend such action.

The Division Chair evaluates each employee each year, including classroom visits, and said evaluations are reduced to writing and forwarded to the Dean for his review and placement in the employee's personnel file. The Dean does not evaluate each individual employee; in fact, the burden of doing so for all the resident faculty would be great. Thus, he relies on the Division Chairs to do so. Neither the fact that 4 of the 5 Chairs have historically been selected by votes of the division faculty itself nor the fact that the evaluation process is highly individualized, negates the need for independent judgment on the part of the Division Chairs as evaluators nor the impact of the resultant evaluations on such matters as merit pay determinations.

While the Division Chairs hourly rate of pay is not greater than a faculty members, his or her yearly income is increased because each Division Chair receives 45 to 48 week contract as opposed to a 36 week contract. In addition the teaching load of the Chairs is reduced to less than half-time so a majority of their time is dedicated to supervising the activities and employees of the Division. Because they are supervising professional employees in a somewhat unstructured setting, they would appear to exercise independent judgment to a greater degree than a supervisor of non-professional employees.

For these reasons we believe that the Division Chairs possess supervisory authority in sufficient combination and degree to render them supervisors. Therefore we exclude them from the unit described above.

B. Managerial Status

In determining whether an individual is a managerial employee, the Commission has consistently considered the following: whether the employee participates to a significant degree in the formulation, determination and implementation of management policy, and whether the employee has the effective authority to commit the employer's resources by establishing an original budget or allocating funds for purposes different from such an original budget. 4/

The District argues that the Division Chairs meet with the Dean and prepare the Division budget and, therefore, are managerial employees. While the Chairs do have some input into management policy and budgetary matters, such input is limited by the structure of the College. The record shows that the Board retains much of the authority to determine policy and the budget, that it delegates responsibility to recommend policy and budgets to the District Director, and that it is the District Director who confers and consults with the Deans of Community Services, Instruction and Student Advising and Counseling, the Director of Administrative Affairs and the Director of Grants/Coordinator of Occupational Education Projects. It is this "kitchen cabinet" that significantly participates in the formulation, determination and implementation of management policy. It is also this "kitchen cabinet" to whom the District Director has delegated the authority to commit the District's resources. While the members of this group receive input from Division Chairs, Center Directors and others, that input appears to be in the form of information upon which the "kitchen cabinet" determines policy and the budget.

For this reason we determine that the Division Chairs are not managerial employees and would not be excluded from the unit on that basis.

C. Confidential Status

In determining whether an employee is a confidential employee, the Commission has long held that such employee must have access to, have knowledge of or

4/ Juneau County, Dec. No. 18728-A (WERC, 1/86); Milwaukee VTAE District, Dec. No. 16483 (WERC, 8/78).

participate in confidential matters related to labor relations. In order for information to be confidential for such purposes, it must be of the type of information which (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations or grievance handling between the employers and the bargaining representative; and (2) is not information that is available to the bargaining representative or its agents. 5/

The District argues in reply that Division Chairs are confidential employees because they create confidential evaluations and have access to personnel files.

In our view, however, the Division Chairs have, at most, a de minimus exposure to confidential labor relations materials which is an insufficient ground for excluding an employee from a bargaining unit. 6/ Mere access to personnel files, alone, is an insufficient indication of confidential status. 7/

For these reasons we conclude that the Division Chairs are not confidential employees and would not be excluded from the unit on that basis.

III. Director of Grants/Coordinator of Occupational Education Projects

The Intervenor argues that the individual occupying these positions, Thomas Maney, is not a managerial employee in that he spends a majority of his time developing and coordinating grant money, that he does not have significant authority to shift funds in the programs for which he is involved, and that he is so constrained by grant guidelines that he has very little flexibility to commit the District's resources.

But the record shows that as Director of Grants Maney's coordination of these grant funds involves the overall supervision of these funds on behalf of the District, including the approval of the expenditure of these funds and the review of the audit of said expenditures. It is Maney to whom Center Directors and others come to get permission to use grant funds for purposes different from those originally budgeted. It is also Maney who meets with the District's top managers to determine the District's overall budget. In the budgets for programs he is involved in, the record shows he does have the authority to allocate funds for different purposes than the budget originally specified. For these reasons we conclude Maney is a managerial employee and is excluded from the unit on that basis.

The District also argues that Maney is both a supervisor and confidential employee. While a secretary and an instructor do report to him, Maney does not have sufficient authority in the areas of discipline, evaluation and direction of the employees' work so as to be found a supervisor. As for confidential status, there is nothing in the record to suggest that Maney is involved in any way in the District's labor relations. For these reasons we conclude that Maney is neither a supervisor nor a confidential employee and, therefore, would not be excluded from the unit on either of those bases.

IV. Director of the Mining Impact Center

The District argues that the Director of the Mining Impact Center, Patricia Travis, is both a managerial and supervisory employee and should be excluded from the unit on that basis. Specifically the District argues that she has responsibility for formulation, determination and implementation of policy as to a new and developing instructional area and the authority to commit the District's resources in that regard.

5/ Menomonee Falls School District, Dec. No. 13492-A (WERC, 10/85). Kenosha VTAE District, Dec. No. 14993 (WERC, 10/76).

6/ Northwood School District, Dec. No. 20022 (WERC, 10/82).

7/ Kenosha County (Sheriff's Department), Dec. No. 21909 (WERC, 8/84).

Travis has a high profile in the mining community, and at some point in the future, the Center may develop into a program comparable to one of the academic divisions. But at this point in time, nothing in the record shows that she is involved in a significant manner in the formulation, determination or implementation of management policy. The record is clear that she does not have authority to allocate the District's resources. For these reasons, we conclude she is not a managerial employee.

In regard to supervision, the District argues that Travis should be excluded from the unit as a supervisor because of her authority over the center's half-time secretary. While Travis does evaluate the secretary and orally reprimanded a previous secretary, such duties take up a minimal amount of Travis' time, especially in this case where close supervision of the employee is not necessary and the employee is already supervised by another District supervisor. It is clear that Travis is paid for her skills related to the development of the Center and not for the supervising of employees although she exercises some discretion and independent judgment in supervising this half-time employee. For those reasons we conclude that she is not a supervisor. Because she is neither a managerial employee nor a supervisor, she is included in the unit.

V. Publications Coordinator

The District argues that the occupant of this position, Linda Boyd, should be excluded from the unit because she is a managerial, supervisory and confidential employee. Specifically, the District argues she is a managerial employee in that she determines what is newsworthy and deals with the strategy of the District in terms of counteracting negative news. However her role is news management, not policy making. Nothing in the record suggests she participates in management policy or has any ability to allocate the District's resources.

As for supervisory status the District points to her supervision of a one-eighth time employee and a part-time student employee. The record shows that she supervises the activities of press release writing and photography and that any authority she has to supervise in the labor relations sense is quite limited.

The District also argues she is a confidential employee because on one occasion the District Director told her an employee might be terminated. The record shows the Director communicated that information merely to inform Boyd why the individual in question would not be attending a committee meeting. Neither that incident nor anything else in the record suggests she has any significant exposure to or involvement in any aspect of labor relations.

For these reasons we conclude that she is not a managerial, supervisory or confidential employee and that, therefore, she is properly included in the unit.

VI. Directors of the Instructional Learning Center and Women's Resource Bureau

The District argues that the Director of the Instructional Learning Center, Jerry Kerner, and the Women's Resource Bureau, Sharon Dion, should be excluded from the unit on the basis of both managerial and supervisory status. However, as noted in Finding of Fact 12 above, managerial policy and allocation of District resources is accomplished at the level of Dean, not at the level of Directors of the various Centers and Bureau.

But unlike some of the positions in dispute where the disputed employee allegedly supervises only one secretary and one or more students, these two positions involve the supervision of at least five employees, and unlike some of the other positions in dispute where the Dean is the actual supervisor, both of these positions report to Dean of Instruction, Robert Steger, who has delegated the supervision of the employees of the Center and Bureau involved here to the Directors.

More specifically, Kerner directs five full-time employees two of whom are secretaries and three of whom are instructors, and four to five part-time faculty. He also evaluates most of these employees. He receives an extended contract similar to the Division Chairs and his teaching duties are substantially reduced, as are the Division Chairs. While the number of employees under his

supervision is less than most of the Division Chairs, no one else is available to supervise these employees on a day-to-day basis. For these reasons we conclude that Kerner should be excluded from the unit on the basis of supervisory status.

As for Dion, the record suffers somewhat because she is on sabbatical leave and was not able to testify personally. Dean of Instruction Steger testified that Dion has authority to direct and assign the work of the one full-time secretary and five part-time specialists, that she has authority to issue written reprimands and to effectively recommend discretionary pay, and that she evaluates the six employees on a yearly basis. We conclude that Dion possesses supervisory authority in sufficient combination and degree to warrant the conclusion that she is a supervisor. For this reason she is excluded from the unit.

VII. Director of the Native American Center

The District argues that Michele LaRock, Director of the Native American Center, is both a managerial and supervisory employee and should be excluded from the unit.

As for managerial status, Finding of Fact 12 noted that such status was restricted to those employed at the level of Dean and above which does not include Center Directors. LaRock testified specifically that she had no authority to allocate money for purposes different than originally budgeted and that she could only do so with Director of Grants Maney's approval. For these reasons we conclude that LaRock is not a managerial employee.

As for supervisory status, LaRock does evaluate the secretary but she does not have authority to issue discipline. The vast majority of her time is spent in accomplishing the goals of the Center. She also spends a substantial part of her time outside the office. This does not leave the secretary totally unsupervised because the Center is located on the second floor of Science Hall amidst the administrative office, permitting for others to exercise supervisory authority over her. In addition, LaRock's job description does not list supervision as part of her duties. For these reasons we conclude that LaRock is not a supervisor. As she is neither a managerial employee nor a supervisor, she is included in the unit.

VIII. Director of the Day Care Center and Director of Financial Aids

Again the District argues that Judith Berbey, Director of the Day Care Center, and William Peshel, Director of Financial Aids, are both managers and supervisors and should be excluded from the unit. As noted above, the exercise of significant authority is undertaken above the level of the Director and therefore does not include these two individuals.

As for supervisory status, both of these employees report to Dean of Student Advising and Counseling, Anthony Vissers. Unlike the Dean of Instruction who supervises over 60 full-time faculty and 240 part-time faculty, as well as the support staff and other professional staff, the Dean of Student Advising and Counseling supervises less than 20 employees. Whereas Dean of Instruction Steger is required by the sheer numbers of his subordinates to delegate supervisory duties to his Chairs and Directors, Dean of Student Advising and Counseling Vissers is able to cover the supervision himself.

That fact is particularly illustrated in the case of these two positions. Berbey

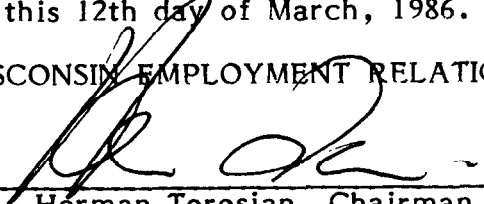
by the only example of possible discipline in this office. It was the Dean who observed the suspect behavior, the Dean who convened a meeting of Peshel and the employe involved, and the Dean who determined discipline was not required.

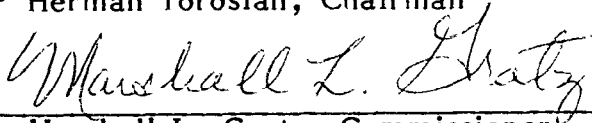
For these reasons we conclude that neither Berbey nor Peshel are supervisors or managerial employes. They are, therefore, included in the unit.

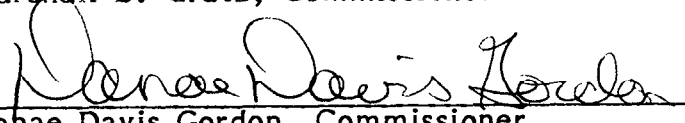
Dated at Madison, Wisconsin this 12th day of March, 1986.

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By


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