

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
SOUTH WEST TEACHERS UNITED
Involving Certain Employees of
BENTON SCHOOL DISTRICT

Case 5
No. 36932 ME-2574
Decision No. 24147

Appearances:

Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin, 53708, appearing on behalf of the Union.

Mr. Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, Inc., 122 West Washington Avenue, Madison, Wisconsin 53703, appearing on behalf of the School District.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DIRECTION OF ELECTION

South West United Teachers, having on May 5, 1986, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election in a bargaining unit consisting of all full-time and regular part-time certified professional employees and all full-time and regular part-time educational support staff personnel including aides, clericals, custodians and food service employees but excluding administrators, principals, and other supervisor, managerial and confidential employees in the Benton School District; and a hearing in the matter having been scheduled for June 18, 1986, and rescheduled and conducted on July 9, 1986, before Examiner Edmond J. Bielarczyk Jr., a member of the Commission's staff; and a stenographic transcript of the proceedings having been prepared and received by the Examiner on August 6, 1986; and the parties having submitted briefs to the Examiner by September 11, 1986; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Benton School District, hereinafter referred to as the District, is a municipal employer maintaining its principal offices at P. O. Box 6, Benton, Wisconsin 53803.

2. That South West Teachers United, hereinafter referred to as the Union, is a labor organization maintaining its principal offices at Route 1, Box F, Livingston, Wisconsin 53554.

3. That in the instant petition the Union requests the Commission to conduct an election among all full-time and regular part-time certified professional employees and all full-time and regular part-time educational support staff personnel including aides, clericals, custodians and food service employees but excluding administrators, principals, and other supervisor, managerial and confidential employees of the District; and that the Union requests that the professional and nonprofessional employees vote to determine whether they desire to be intermingled into one bargaining unit.

4. That the Union contends that the District's professional employees and nonprofessional employees share a sufficient community of interest to constitute an appropriate bargaining unit; that the Union argues that the number of employees involved, common supervision of the employees, bargaining history, and the legislative policy against fragmented units support its position for a single bargaining unit; and that the Union argues that the Municipal Employment Relations Act (MERA) specifically contemplates the right of professional employees to be included in a bargaining unit of nonprofessional employees by allowing the professional employees to vote to be included in the nonprofessional bargaining unit.

5. That the District contends a bargaining unit consisting of professional and nonprofessional employees would be inappropriate; that the District argues that the professional and nonprofessional employees do not share a sufficient community of interest to constitute an appropriate single bargaining unit; that the District argues the professional and nonprofessional employees have different skills, duties, wages, hours and working conditions; that the District does not object to a professional employee bargaining unit and a nonprofessional employee bargaining unit; and that the District argues that two bargaining units will not result in undue fragmentation of bargaining units.

6. That the Union and the District stipulated that the Principal position occupied by Raymond Swift is a managerial/supervisory position; and that the Union and District stipulated that the Secretary/Bookkeeper position occupied by Gayle Wolf is a confidential position.

7. That the District employs 27 professional employees as teachers whose salary during the 1984-85 school year ranged from \$13,300 to \$22,248.00; that the District has bargained with professional employees as a voluntarily recognized bargaining unit since the 1960's; that in 1983, a mediation request was filed with the Commission concerning the professional bargaining unit and the District; that in 1984 and 1985 mediation/arbitration petitions were filed which resulted in decisions by an arbitrator; that the professional employees have been affiliated with the Union since September, 1985; that the District and the Union have bargained a collective bargaining agreement which applies to the said professional employees; that said agreement contains a salary schedule, an extra curricular schedule and the provisions for wages, hours and working conditions contained in each professional teacher's employment contract.

8. That the District employs 8 nonprofessional employees (4 custodians, 3 food service employees and 1 clerical employee) who work on either a school-year (180 days), 11-month, or 12-month basis and whose wages range from \$6,615 to \$14,248; that Bell receives an additional \$567.00 per year as Head Cook; that Spillane receives an additional \$200 per year as the Head Custodian at the District's Elementary School; that Blaine receives an additional \$300 per year as the Head Custodian at the District's High School; that the District has not voluntarily recognized the nonprofessional employees but has met with a group or sub-group of nonprofessional employees to discuss wages, hours and working conditions; and that each nonprofessional employee signs an individual employment contract which identifies each nonprofessional employee's wages, hours and working conditions.

9. That the nonprofessional and professional employees share the same work location working in either the District's High School or Elementary School, and share common work, rest and eating areas; that the nonprofessional and professional employees receive the same health insurance benefits, dental insurance, vision insurance, disability insurance and are in the same retirement program; that the nonprofessional employees and professional employees share common supervision; and that all employees work an eight-hour-day shift except cooks who work a seven-hour-day shift.

10. That the professional employees are teachers certified by the Wisconsin Department of Public Instruction (D.P.I.) requiring that they achieve certain educational attainments prior to being certified; that professional employees must maintain their D.P.I. certification in order to maintain their employment positions, receive paid time off for professional improvement and attendance at conventions, also receive additional compensation for receiving additional education, and are primarily involved in the educational development of students; that nonprofessional employees do not have any minimum educational requirements, may if the District deems it necessary to attend training and/or seminars with only the Head Cook being required to take courses determined by D.P.I., and are primarily involved in maintenance, food service or clerical work; that professionals are salaried employees and nonprofessionals are hourly paid; that professional employees work 190 days per year, work 8:00 a.m. to 4:00 p.m., Monday through Friday but may leave the work site after 3:30 p.m. on Fridays, inservice days and days before a holiday; that the professional employees receive additional compensation for length of service, education beyond a Bachelor's Degree, work performed in accordance with the extra curricular pay schedule, and the minimum entry level pay for a full-time professional is \$14,150; that professional employees do not receive paid holidays or paid vacations but do receive 12 sick days per year cumulative to 90 days; that nonprofessional employees work either a

180-day, 11-month, or 12-month - work schedule; that the custodians and the clerical employees work 8:00 a.m. to 4:00 p.m., Monday through Friday, while the food service employees work 6:00 a.m. to 1:30 p.m. or 6:30 a.m. to 2:00 p.m., Monday through Friday; that nonprofessional employees do not receive additional compensation for length of service or for working outside of the normal workday; that only the 12-month nonprofessional employees receive a paid vacation and 9 paid holidays; that the 12-month nonprofessional employees receive 12 sick days per year accumulative to 90 days; that the 180-day nonprofessional employees received 12 sick days per year prior to the 1985 school year; that thereafter, they received 9 sick days per year accumulative to 90 days; that the lowest paid nonprofessional earns \$6,615.00 per year and the highest paid earns \$14,448 per year; and that there is no transfer of employees between professional and nonprofessional employees.

11. That the professional employees and nonprofessional employees do not share a sufficient community of interest to constitute an appropriate unit of bargaining; that a bargaining unit consisting of all nonprofessional employees of the District and a separate bargaining unit of professional employees of the District will not result in undue fragmentation of bargaining units; that a bargaining unit of all regular full-time and regular part-time nonprofessional municipal employees of the District is an appropriate bargaining unit; that a question of representation does not exist concerning the voluntarily recognized professional bargaining unit affiliated with the Union; that a question of representation has arisen among the nonprofessional employees.

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

CONCLUSIONS OF LAW

1. That the petitioned-for-bargaining unit described in Finding of Fact 3 is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That a bargaining unit consisting of all full-time and regular part-time nonprofessional employees of the Benton School District, excluding confidential, managerial, supervisory, and executive employees, is an appropriate unit within the meaning of Sec. 111.70(4)(d)2.a., Stats., and that a question of representation presently exists in said unit.

3. That no question of representation exists with respect to any other employees of the District.

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

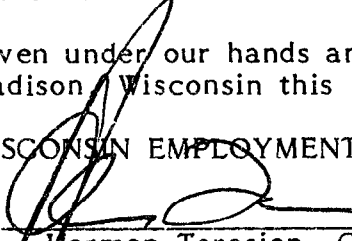
DIRECTION OF ELECTION

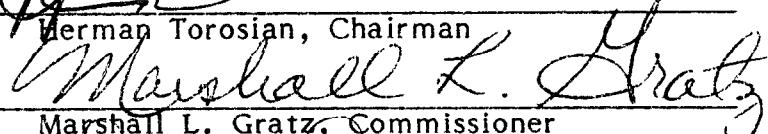
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five days from the date of this directive in the collective bargaining unit consisting of all full-time and regular part-time nonprofessional employees of the Benton School District, excluding confidential, managerial, supervisory and executive employees who were employed on December 15, 1986, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by South West Teachers United for the purposes of collective bargaining with the Benton School District on questions of wages, hours and conditions of employment.

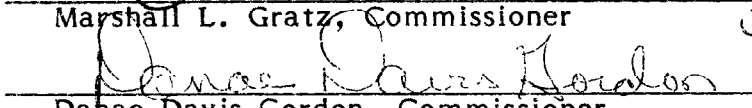
Given under our hands and seal at the City of
Madison, Wisconsin this 15th day of December, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Dahae Davis Gordon, Commissioner

BENTON SCHOOL DISTRICT

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

The parties do not dispute the eligibility of employees to participate in a representation election. However, the Union seeks one bargaining unit consisting of all full-time and regular part-time employees of the District, including professional and nonprofessional employees. The District asserts there is not a community of interest between the professional and nonprofessional employees of the District and therefore contends there should be two bargaining units. The fundamental issue herein is thus whether a combined unit of education professionals and nonprofessional District personnel constitutes an appropriate single bargaining unit.

UNION'S POSITION

The Union asserts Sec. 111.70(4)(d)2.a. Stats., specifically contemplates a combined unit such as that petitioned for in the instant matter. The Union argues the Commission has the legal authority to establish the bargaining unit sought by the Union. The Union points to the factors considered by the Commission in determining appropriate units under the MERA and argues either of the proposed units is appropriate. The Union claims the Commission could justifiably establish either a single combined unit or two separate units. However, the Union contends the District's objection to the combined unit cannot be considered a sufficient basis for the denial of a combined unit, but, that the Commission is required to make its decision on the basis of the totality of circumstances.

The Union argues that the factual circumstances support to a large degree its request for a combined unit. These are: 1) avoidance of fragmentation, 2) identical fringe benefits of health, dental, vision and disability insurance and retirement, 3) the same supervision and that the same entity establishes labor relations policies for both groups, 4) common work sites, with common meal and rest break areas, 5) the bulk of employees have the same work hours; and 6) while the professional employees have only recently organized into a formal collective bargaining unit, the professional employees have met with management as an independent group of employees for many years, as did the nonprofessional employees. The Union argues that in every situation involving a combined unit of professional and nonprofessional employees there will be de facto differences in wages, duties, skills and training. The Union asserts such differences do not preclude a combined unit. The Union argues that to inflexibly focus on the obvious differences would render Sec. 111.70(4)(d)2.a., Stats., as mere surplusage. The Union contends the legislature obviously contemplated a combined unit of professional and nonprofessional employees who shared a sufficient community of interest when they passed said legislation. The Union asserts that in the most important area, the establishment and implementation of management labor relations policy, the two groups share a significant community of interest.

The Union also contends the Commission should consider certain policy choices which are raised by the instant matter. The Union points out that although the professional employees outnumber the nonprofessional employees 27 to 8, the statutory provision noted above effectively contemplates this concern because the nonprofessional employees could be given the right of a secret ballot vote to determine whether they desire to establish a separate unit. If they so choose, the Union still intends to represent them. The Union argues that the employees,

combined unit would benefit not only the parties, but would place less of a demand on the limited resources of the Commission, particularly in view of the proliferation of small groups of school district nonprofessional employees organizing for the purposes of collective bargaining.

In conclusion, the Union argues that in the future should the District be able to demonstrate that bargaining with a combined unit is incompatible with effective labor management relations, the District could petition for a unit clarification. At the present time the Union argues there is no factual basis and only mere speculation on which the District seeks to preclude the employees from exercising their statutory right to determine whether they desire a combined unit.

DISTRICT'S POSITION

The District contends a bargaining unit consisting of 27 teachers, 4 custodians, 3 food service employees and 1 clerical employee is inappropriate. The District does not object to two bargaining units and asserts the professional employees do not share a community of interest with the nonprofessional employees and that they have substantially different skills, duties, wages, hours and working conditions. The District acknowledges the two groups have a common work place, common supervision, some common fringe benefits and that some professional employees and nonprofessional employees have similar hours. However, the District contends that the evidence supporting separate bargaining units far outweighs evidence supporting a combined unit.

The District argues that the following factors support a conclusion that the professional and nonprofessional employees do not share a community of interest. 1) different skills, duties, educational requirements and job responsibilities, 2) wages, with the highest paid nonprofessional employee who is a 12-month employee earning only a few hundred dollars more than the B.A. base salary for a professional employee who works 190 days, 3) professional compensation is based upon educational level and years of experience while nonprofessional compensation is not, 4) professional employees receive additional compensation pursuant to the extra curricular pay schedule for work performed outside of the school day while nonprofessional employees do not, and 5) historically professional employees have bargained with the District as a separate group from the nonprofessional employees while the nonprofessional employees have met with the District as a group or sub-group to discuss wages, hours and working conditions.

The District claims this same evidence establishes that two separate bargaining units would not result in undue fragmentation of bargaining units. The District argues that because the interests of the two groups is substantially different there is no good reason to combine the two. If they were combined there would be few common provisions with many more provisions specific to one group or the other. Therefore, the District contends one bargaining unit of 27 teachers, 4 custodians, 3 food service workers and 1 clerical employee is not appropriate.

DISCUSSION

In establishing appropriate collective bargaining units the Commission is required to consider and apply Sec. 111.70(4)(d)2.a., Stats., which reads as follows:

The Commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The

commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot.

MERA provides that the Commission shall not decide that any unit is appropriate if it includes both professional and nonprofessional employees unless a majority of the professional employees vote by secret ballot for inclusion in such a unit. The Union herein has argued that both groups of employees should vote to determine whether there should be a combined unit. The Union has also asserted that neither the Commission nor management should second guess the employees' decision, that the Commission should consider the interface of mediation/arbitration law with the combined unit, and also consider that a combined unit would place less of a demand on the Commission's limited resources. However, we have held that there is a need to insure that the unique interests and aspirations of a given group of employees will not be subordinated to the interests and aspirations of another group of employees and that a balance must be struck between this need and an unreasonable number of bargaining units. 1/ Therefore, the Commission determines the appropriateness of collective bargaining units on a case-by-case basis and in making the appropriate determination we consider the following factors:

1. Whether the employees in the unit sought 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 employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have 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 a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. 2/

Not all of the factors necessarily deserve the same weight and in some cases one or more of the factors may predominate. 3/

When the above factors are applied to the facts in the instant matter we conclude that the petitioned-for unit is not appropriate. While the employees herein have common supervision, common work areas, and some common fringe benefits (health benefits, dental, vision, and disability insurance, and retirement), the employees differ vastly in community of interest, duties and skills, wages, hours and working conditions, and bargaining history. These differences include:

1. Community of interest. The professional employees are teachers certified by the Wisconsin Department of Public Instruction (D.P.I.) and they must maintain their D.P.I. certification in order to maintain their employment positions, receive paid time off for professional improvement

1/ City of Madison, Dec. No. 19772 (WERC, 7/82).

2/ City of Madison, Dec. No. 23183, (WERC, 1/86); Mid State VTAE, Dec. No. 14526-A, (WERC, 5/85).

3/ Shawano - Grisham School District, Dec. No. 21265 (WERC, 12/83).

and attendance at conventions, also receive additional compensation for receiving additional education, and are primarily involved in the educational development of students. Nonprofessional employees do not have any minimum educational requirements, may, if the District deems it necessary attend training and/or seminars with only the Head Cook being required to take courses determined by D.P.I., and are primarily involved in maintenance, food service or clerical work.

2. Wages, hours and working conditions. Professionals are salaried employees and nonprofessionals are hourly rated. Professional employees work 190 days per year, work 8:00 a.m. to 4:00 p.m. Monday through Friday but may leave the work site after 3:30 p.m. on Fridays, in-service days and days before holidays. The professional employees receive additional compensation for length of service, education beyond a Bachelor's Degree, work performed in accordance with the extra curricular pay schedule and the minimum entry level pay for a full-time professional is \$14,150. Professional employees do not receive paid holidays or paid vacations. Nonprofessional employees work either a 180 day, 11-month or 12-month work schedule. The custodians and the clerical employees work 8:00 a.m. to 4:00 p.m. Monday through Friday while the food service employees work 6:00 a.m. to 1:30 p.m. or 6:30 a.m. to 2:00 p.m. Monday through Friday. Nonprofessional employees do not receive additional compensation for length of service or for working outside of the normal workday. Twelve-month nonprofessional employees receive holiday pay and a paid vacation. The lowest paid nonprofessional earns \$6,615.00 per year and the highest paid earns \$14,448 per year.
3. Duties and skills. Professional employees are primarily involved in the educational development of students. Nonprofessional employees are primarily involved in maintenance, cooking and clerical duties. The two groups do not share common training/education, job duties or job responsibilities. There is no transfer of employees between the professional and nonprofessional group.
4. Bargaining History. The professional employees have collectively bargained with the District since the 1960's and have been extended voluntary recognition as a bargaining unit. In 1983 they requested the services of a Commission mediator. In 1985 they voluntarily resolved a mediation/arbitration petition before an arbitrator. In 1986 an arbitrator resolved an interest arbitration dispute. The nonprofessional employees have not been voluntarily recognized by the District. However, nonprofessional employees as a group or sub-group have met informally with the District to discuss wages, hours and working conditions.

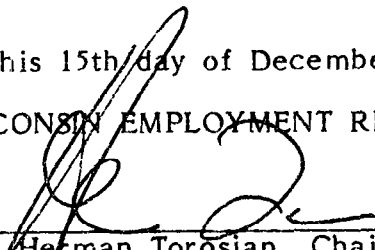
After a careful consideration of the above factors we conclude the arguments raised by the Union are insufficient to overcome the unique community of the interests exhibited by the nonprofessional employees. As the District has also traditionally viewed the employees as two (2) separate groups, we conclude that a unit of nonprofessional employees will not result in undue fragmentation of bargaining units. In addition, since there has been no showing that a question of

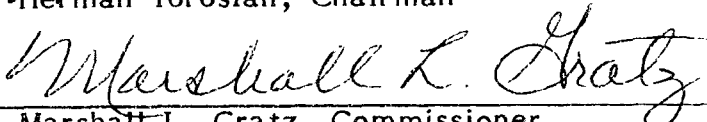
representation exists among the professional employees, we have only directed an election among the nonprofessional employees.


Dated at Madison, Wisconsin this 15th day of December, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner