

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**CENTRAL WISCONSIN UNISERV COUNCILS, WEAC, NEA**  
Involving Certain Employees of  
**STANLEY-BOYD AREA SCHOOL DISTRICT**

Case 35  
No. 59955  
ME-3831

**Decision No. 24705-B**

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Appearances:

**Ms. Mary Virginia Quarles**, UniServ Director, Central Wisconsin UniServ Council – Unit #1, 625 Orbiting Drive, P.O. Box 158, Mosinee, Wisconsin 54455-0158, appearing on behalf of Central Wisconsin UniServ Councils, WEAC, NEA.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Naomi E. Soldon** and **Attorney Jill M. Hartley**, 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of General Teamsters Union Local 662, International Brotherhood of Teamsters, AFL-CIO.

Weld, Riley, Prens & Ricci, S.C., by **Attorney Richard J. Ricci**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Stanley-Boyd Area School District.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION**

On May 1, 2001, Central Wisconsin UniServ Councils, WEAC, NEA, herein CWUC, filed a petition with the Wisconsin Employment Relations Commission seeking an election in a bargaining unit of certain employees of the Stanley-Boyd Area School District, herein the District, described in the petition as:

Full-time and regular part-time Teacher Aides and Clerical Employees, but excluding all teachers, administrators, maintenance, custodial, cooks, laundry workers, bus drivers, and all other professional employees.

General Teamsters Union Local 662 currently represents the employees in question in two separate units and argues that the combined unit sought by CWUC is inappropriate. The District takes no position in this matter.

Examiner John R. Emery, a member of the Commission's staff, conducted a hearing in Stanley, Wisconsin, on September 6, 2001. CWUC and Local 662 filed briefs by October 16, 2001. CWUC filed a reply brief on November 6, 2001, and the record was thereupon closed.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**FINDINGS OF FACT**

1. The Stanley-Boyd Area School District, herein the District, is a municipal employer with offices located at 507 East First Avenue, Stanley, Wisconsin 54768.

2. Central Wisconsin UniServ Councils, WEAC, NEA, herein CWUC, is a labor organization with offices located at 625 Orbiting Drive, P.O. Box 158, Mosinee, Wisconsin 54455-0158.

3. General Teamsters Union Local 662, International Brotherhood of Teamsters, AFL-CIO, herein Local 662, is a labor organization with offices located at 1280 West Clairemont Avenue, P.O. Box 86, Eau Claire, Wisconsin 54702-0086.

4. In 1988, the District voluntarily recognized Local 662 as the exclusive collective bargaining representative of the following bargaining unit as described in the parties July 1, 1998 – June 30, 2001 contract:

Full-time and regular part-time Teacher Aides and Clerical Employees, but excluding all teachers, administrators, maintenance, custodial, cooks, laundry workers, bus drivers, and all other professional employees.

The 1998 – 2001 contract provided that either party should give the other notice of a desire to terminate, modify or amend the agreement at least 60 days prior to the expiration date.

5. On February 20, 2001, five of the six “Clerical Employees” in the bargaining unit met with Local 662 Representative James Dawson and requested that Local 662 represent the “Clerical Employees” in a separate bargaining unit from the 19 “Teacher Aides.” On March 1, 2001, Dawson sent the following letter to the District Administrator:

. . .

**RE: AIDES AND CLERICALS BARGAINING UNIT**

Mr. Poulter, I have been requested by the clericals we represent at Stanley-Boyd Area Schools to review if it would be possible to negotiate a contract separate from the aides. This would mean splitting the aides and clericals into two separate bargaining units.

In consultation with the WERC I have learned that the separation of these two units is attainable, if both the Union and the Management agree to it.

By way of this letter I am notifying the Stanley-Boyd School District that Teamsters Union Local 662 is agreeable to this division of our represented aides and clericals into two separate units. I am also asking the School District if splitting the unit would be acceptable to them.

I would ask for a speedy reply due to the negotiating process starting shortly. If you have any questions or would like to meet on this issue, please give me a call.

. . .

6. On April 23, 2001, the District Administrator sent the following letter to Local 662 Representative Dawson:

. . .

The Board of Education at its regular meeting on March 20 voted to approve the request of the secretaries to form their own group within the Teamster’s Union.

I have included a copy of the minutes for your information.

If you have any questions, please feel free to contact me.

. . .

Thereafter, on April 24, 2001, Dawson notified the Commission in writing of the parties' agreement.

7. On April 25, 2001, Dawson sent separate letters to the District on behalf of the "Teacher Aides" and "Clerical Employees" bargaining units, affirming the terms of the existing collective bargaining agreement and announcing Local 662's desire to open negotiations for successor agreements for each unit.

8. On May 1, 2001, CWUC filed a petition for an election and showing of interest in the combined "Aides and Clericals" bargaining unit described in Finding of Fact 4.

9. The "Aides and Clericals" receive identical fringe benefits and have nearly identical wage grids. The "Clerical Employees" have a 5-step wage grid which, in 2001, went from \$6.25 per hour to \$9.75 per hour. The "Teacher Aide" have a wage grid which, in 2001, went from \$6.25 per hour to \$9.69 per hour.

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

### **CONCLUSIONS OF LAW**

1. A bargaining unit consisting of all full-time and regular part-time Teacher Aides and Clerical Employees, but excluding all teachers, administrators, maintenance, custodial, cooks, laundry workers, bus drivers, and all other professional employees and supervisors, confidential, managerial and executive employees is an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. A question concerning representation exists within the meaning of Sec. 111.70(4)(d)3, Stats., in the bargaining unit described in Conclusion of Law 1.

Based on 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 45 days from the date of this Direction of Election in a collective bargaining unit consisting of all full-time and regular part-time Teacher Aides and Clerical Employees, but excluding all teachers, administrators, maintenance, custodial, cooks, laundry workers, bus drivers, and all other professional employees and supervisors, confidential, managerial and executive employees is an appropriate bargaining unit within the

meaning of Sec. 111.70(4)(d)2.a., Stats., who were employed on January 25, 2002, except such employees as may, prior to the election, terminate their employment or be discharged for cause, for the purpose of determining whether a majority of the employees voting desire to be represented by the Central Wisconsin UniServ Councils, WEAC, NEA or General Teamsters Union Local 662, International Brotherhood of Teamsters, AFL-CIO for the purpose of collective bargaining with the Stanley-Boyd Area School District on wages, hours and conditions of employment.

Given under our hands and seal in the City of Madison this 25<sup>th</sup> day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

STANLEY-BOYD AREA SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

Initial Briefs

CWUC

The Municipal Employment Relations Act permits employees to petition for a change of representation, which cannot be barred by an attempt by the current bargaining agent to change the composition of the unit. There are 19 teacher aides and 6 clerical employees in the unit. Dividing them would result in undue fragmentation, which would be contrary to both statute and Commission precedent.

The Commission has in the past recognized the appropriateness of “white collar” support units in school district settings [cf; SHAWANO-GRESHAM SCHOOL DISTRICT, DEC. NO. 21265 (WERC, 12/83)]. Moreover, the Commission has recognized the frailty of small units and has acted to prevent fragmentation for this reason.

The move to divide this unit was not a decision of the majority, but of only five unit members. The District subsequently made its decision to approve the split based upon incomplete information and should not, therefore, be bound by it. Finally, the indication of the Teamsters that they wish to “open negotiations” for the new units is not germane to the determination of an appropriate bargaining unit.

Local 662

The bargaining unit proposed by CWUC is not appropriate in light of the agreement between Local 662 and the District to divide the unit into two units. In OREGON SCHOOL DISTRICT, DEC. NO. 28110-C (WERC, 4/96), the Commission identified the recognized factors that it considers in determining an appropriate unit, but also stated that, depending on the individual case, not all factors deserve the same weight. In this case, there is no claim that the two groups do not share a community of interest. Bargaining history, however, compels a finding that the groups should be separate. The employees, themselves, proposed the split, to which the District agreed. Despite the fact that no new agreement has yet been negotiated, this “bargaining history” of employee initiative and District acquiescence renders CWUC’s proposed unit inappropriate.

The Commission has been unwilling to disturb a previously established bargaining relationship without a compelling reason [cf; MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NO. 20836-A (WERC, 11/83)]. No such compelling reason exists here. In fact, to disrupt the current composition would be contrary to the desires of Local 662, the District and the members themselves. The clerical employees, because of the disparity in numbers, clearly wanted a unit that was responsive to their concerns. The Commission has recognized the validity of such concerns [cf; CITY OF MADISON (WATER UTILITY), DEC. NO. 19584 (WERC, 5/82); DANE COUNTY, DEC. NO. 10492-A (WERC, 3/72)].

In unit accretion cases, the Commission has regularly honored the parties' agreements regarding unit composition [cf; DE PERE SCHOOL DISTRICT, DEC. NO. 25712-A (WERC, 10/90); OREGON SCHOOL DISTRICT, DEC. NO. 28110-C (WERC, 4/96); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 16405-C (WERC, 1/76)]. Those cases support the agreement reached here. The two units were in existence at the time the election petition was filed. None of the positions are statutorily excluded from the bargaining unit, nor has there been any change in circumstances since they were formed. Finally, the two units are not repugnant to the Act. Therefore, the Commission should honor the parties' agreement and dismiss the petition.

### **In Reply**

### **CWUC**

Contrary to the assertion of Local 662, the teacher aides and clerical employees units have no separate bargaining history. Their entire bargaining history has been an unbroken series of agreements negotiated as a combined unit. Furthermore, the unit accretion cases cited by Local 662 are not relevant to these circumstances. Those cases involved two parties – an employer and one union. In this case, three parties are involved and an agreement between two of them cannot bar the right of the third to petition for an election within the unit described in the current collective bargaining agreement.

### **Local 662**

There is nothing invalid in the decision of Local 662 and the District to split the bargaining unit and the Commission has traditionally encouraged voluntary agreement between the parties over unit composition, as long as the proposed unit is not repugnant to the Act. This is as true for established units as it is for new ones.

There is also no merit to CWUC's contention that the District was not fully informed. The Local 662 representative made it clear to the District that the clerical employees were seeking a split of the unit. Since the District's decision was an informed one, it is entitled to

be honored. Nor is it necessary that the teacher aides approve of the split. The employees have a right to choose their bargaining representative, but they do not have the power to determine the composition of the unit. That power is reserved to the Commission, which has traditionally respected the agreements of the parties in such matters. This was not a decision of the bargaining unit or of five members of the bargaining unit. It was a request of Local 662 to which the District agreed.

The clerical employees have unique interests from the teacher aides which outweigh concerns against fragmentation. The Commission has recognized that the anti-fragmentation policy must be balanced against the need to ensure that the unique interests of a given group are not subordinated to another [cf; SHEBOYGAN COUNTY, DEC. No. 29847 (WERC, 3/00)]. Combining these units would have the effect of subordinating the clerical employees' interests to those of the aides.

### DISCUSSION

This case presents the unusual circumstance of a rival union petitioning for an election within a bargaining unit shortly after the voluntary division of that bargaining unit by the incumbent bargaining representative and the employer.

Our task in this proceeding is to determine whether the unit sought by CWUC is "an appropriate unit" within the meaning of Sec. 111.70(4)(d)2.a., Stats., which provides in pertinent part:

2.a. The commission shall determine the appropriate collective bargaining unit for the purpose of collective bargaining and shall whenever possible, unless otherwise require under this subchapter, avoid fragmentation by maintaining as few collective bargaining 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 municipal employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a collective bargaining unit. Before making its determination, the commission may provide an opportunity for the municipal 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 group of municipal employees constitutes **an appropriate collective bargaining unit** if the group includes both municipal employees who are school district professional employees and municipal employees who are not school district professional employees. . . .(Emphasis added.)

When making that determination, we consider the facts presented by the parties as measured against the statutory language of Sec. 111.70(4)(d)2.a., Stats., and 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 units sought as compared to the wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.
5. The degree to which the employees in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. 1/

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*1/ ARROWHEAD UNITED TEACHERS v. WERC, 116 WIS. 2D 580 (1984); BENTON SCHOOL DISTRICT, DEC. NO. 24147 (WERC, 12/86); BOYCEVILLE COMMUNITY SCHOOL DISTRICT, DEC. NO. 20598 (WERC, 4/83).*

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We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase "community of interest" as a means of determining whether employees share similar interests, usually — though not necessarily — limited to those interests reflected in Factors 2 - 5. This definitional duality is of long standing, and has received the approval of the Wisconsin Supreme Court. 2/

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*2/ ARROWHEAD UNITED TEACHERS v. WERC, 116 WIS. 2D 580, 592 (1984):*

*. . .when reviewing the Commission’s decisions, it appears that the concept (community of interest) involves similar interests among employees who also participate in a shared purpose through their employment.*

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The fragmentation criterion reflects our statutory obligation to "avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal workforce." 3/ The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. 4/

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3/ *Section 111.70(4)(d)2.a., Stats.*

4/ *MARINETTE SCHOOL DISTRICT, DEC. No. 27000 (WERC, 9/91).*

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Based upon long-standing Commission precedent, it is well established that within the unique factual context of each case, not all criteria deserve the same weight 5/ and thus a single criterion or a combination of criteria listed above may be determinative. 6/ Consequently, the Commission gives effect to the aforesaid statutory provision by employing a case-by-case analysis 7/ "to avoid the creation of more bargaining units than is necessary to properly reflect the employees' community of interest." 8/

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5/ *SHAWANO-GRESHAM SCHOOL DISTRICT, DEC. No. 21265 (WERC, 12/83); GREEN COUNTY, DEC. No. 21453 (WERC, 2/84); MARINETTE COUNTY, DEC. No. 26675 (WERC, 11/90).*

6/ *Common purpose, MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NOS. 20836-A and 21200 (WERC 11/83); similar interests, MARINETTE SCHOOL DISTRICT, SUPRA; fragmentation, COLUMBUS SCHOOL DISTRICT, DEC. No. 17259 (WERC, 9/79); bargaining history, LODI JOINT SCHOOL DISTRICT, DEC. No. 16667 (WERC, 11/78).*

7/ *APPLETON AREA SCHOOL DISTRICT, DEC. No. 18203 (WERC, 11/80).*

8/ *AREA BOARD OF VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT No. 1, DEC. No. 11901 (WERC, 5/73).*

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Most importantly, our consideration is not based on whether the unit sought is *the most* appropriate unit, but rather whether it is *an* appropriate unit. 9/

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9/ *OCONTO SCHOOL DISTRICT, DEC. NOS. 29295 AND 29296 (WERC, 1/98); MARINETTE SCHOOL DISTRICT, DEC. No. 27000 (WERC, 9/91).*

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Local 662 concedes that the employees in the unit sought by CWUC all share a community of interest as measured by Factors 1-5 above.

However, Local 662 asserts that the CWUC-sought unit is not appropriate because of the Factor 7 “bargaining history” created when Local 662 and the District split the unit into two separate units shortly before the CWUC petition was filed.

We do not find Local 662's “bargaining history” argument persuasive. A combined clerical/aides unit had existed for more than 12 years. The separate clerical and aides units had existed for a very limited time prior to the CWUC petition. Thus, it is clear that the “bargaining history” factor in fact supports the appropriateness of the CWUC unit.

Given all of the foregoing, and the fact that a combined clerical/aides unit is more compatible with the Factor 6 statutory concern for fragmentation of bargaining units than are separate clerical and aide units, we conclude that the unit sought by CWUC is “an appropriate” unit.

In reaching this conclusion, we acknowledge but reject the Local 662 line of argument that the combined unit will unacceptably subordinate the interests of the clerical employees. The comparable wages and benefits of clericals and aides and the lengthy existence of the combined unit persuade us otherwise.

We also reject the Local 662 contention that approval of the CWUC unit runs contrary to unit clarification case law that upholds parties’ voluntary agreements as to unit composition. An election petition calls on us to determine whether the unit sought is “appropriate” while a unit clarification petition calls on us to determine whether employees should be added to or removed from an existing unit. Therefore, these two types of cases call for different lines of analysis and thus the unit clarification law cited by Local 662 is simply inapplicable in this election proceeding.

Given the foregoing, we have directed an election in the combined clerical/aide unit.

Dated at Madison, Wisconsin, this 25<sup>th</sup> day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner