

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of :
 :
 DE PERE EDUCATION SUPPORT PERSONNEL :
 ASSOCIATION, WEAC : Case 14
 : No. 43029 ME-366
 Involving Certain Employes of : Decision No. 25712-A
 :
 DE PERE SCHOOL DISTRICT :
 :

Appearances:

Mr. Stephen Pieroni, Staff Counsel, 33 Nob Hill Road, Madison, Wisconsin 53708, on behalf of the Association.
 Melli, Walker, Pease & Ruhly, S.C., by Mr. James K. Ruhly, 119 Martin Luther King Jr. Boulevard, Suite 600, Madison, Wisconsin 53701-1664, on behalf of the District.

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

De Pere Education Support Personnel Association, WEAC, having on October 31, 1989, filed a petition to clarify bargaining unit with the Commission; and the parties thereafter having agreed to hold a hearing in abeyance pending a possible settlement; and thereafter, by letter received December 7, 1989, the Association having advised the Commission that settlement discussions between the parties had failed and requested that a hearing be conducted; and on January 12, 1990, hearing having been held before Sharon Gallagher Dobish, a member of the Commission's staff, in De Pere, Wisconsin; and a stenographic transcript having been made of the hearing and the parties having filed post-hearing briefs which were exchanged by the Examiner by April 25, 1990; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issue the following

FINDINGS OF FACT

1. That De Pere Education Support Personnel Association, WEAC, hereinafter the Association, is a labor organization and has its offices located at 33 Nob Hill Road, Box 8003, Madison, Wisconsin 53708.
2. That the De Pere School District, hereinafter the District, is a municipal employer and has its offices located at 1700 Chicago Street, De Pere, Wisconsin 54115.
3. That on June 5, 1988, the Association filed a petition for an election in the following collective bargaining unit of District employes.
 "all regular full-time and regular part-time non-teaching personnel employed by the District in the classifications of custodial, bookkeeping, aides, secretarial and food service; but excluding all professional, supervisory, managerial and confidential employees";

that by letter dated July 25, 1988, the District advised the Association as follows:

. . .

The De Pere School District is willing to sign a

Stipulation for Election on the following conditions:

1. That the appropriate collective bargaining unit be described as follows: All regular full-time and regular part-time non-teaching employees in the classifications of custodial, food service (bakers and cooks), aides, and clerical, and excluding all professional, supervisory, managerial, confidential and all other employees.
2. That the appropriate inclusions and exclusions are as set forth in the attached list;

. . .

that the attachment referred to in the July 25, 1988 letter read as follows:

DEPERE SCHOOL DISTRICT

Support Staff Unit

A. INCLUSIONS

<u>Classification</u>	<u>Name</u>
HS Custodian III	I. Halstead
HS Custodian III	D. Kerkoff
HS Custodian III	J. Mooren
HS Custodian III	P. Pansier
HS Custodian III	E. Rozmaryonski
HS Custodian III	S. Smits
HS Custodian III	M. Vanderlogt
HS Custodian III	P. Vogels
MS Custodian III	G. Normann
MS Custodian III	J. Schmitz
MS Custodian III	E. VandenBusch
ES Custodian III	J. Linzmeier
ES Custodian III	M. VandenHoogen
ES Custodian III	M. Olson
Baker	L. Diedrich
HS Cook	D. Leiterman
HS Cook	B. Seeman
HS Cook	M. VerHaagh

ES Cook	D. Pansier
S Cook	N. Fenton
MS Cook	B. Rottier
MS Cook	M. Walsh
Guidance Secretary	J. Liebergen
HS Secretary	B. Meeusen
Accounting Secretary	K. Ziemer
MS Clerical Aide	B. Rentmeester
ES Clerical Aide	G. Sauer
Instructional Aide	M. Garber
MS Library Aide	K. Uffelman
ES Aide	C. Carter
ES Aide	S. Gussert

B. EXCLUSIONS

<u>Classification</u>	<u>Name</u>	
Maintenance Supervisor	J. Borman	Supervisor
MS Custodian I	M. Vieau	Supervisor
MS Custodian II	A. Danalski	Supervisor
ES Custodian I	B. Walch	Supervisor
HS Custodian II	D. Treml	Supervisor
Head Chef	B. Trinkner	Supervisor
Adm. Secretary	J. Byrne	Confidential
Bookkeeper	R. Cavil	Confidential
HS Princ. Secretary	M. Lemke	Conf./Super.
MS Secretary	M. Kopecky (Messmann)	Conf./Super.
ES Secretary	R. Van Rite	Confidential

that the District did not list the positions of Server, Noon Hour Supervisor Aide, Dishwasher, or Ticket-Taker on the list of proposed exclusions because it concluded that the incumbents in said positions did not work sufficient hours to be eligible for union representation; that the parties subsequently executed a Stipulation for Election which included the unit description set forth in the District's July 25 letter and a list of eligible and ineligible voters which conformed to the attachment to the July 25 letter except as follows:

1. G. Sauer, ES Clerical Aide, was deleted from the

list of eligibles because she resigned.

2. M. Koski, Support Service Secretary, was added to the list of eligibles subject to the parties' right to challenge her ballot if she voted.
3. M. Vieau, A. Danalski, B. Walch and D. Treml, Custodian I and II, were added to the list of eligibles.

that following the election in which the Association received a majority of the ballots cast, on November 1, 1988, the WERC certified the Association as the exclusive representative of the employes in the following unit:

all regular full-time and regular part-time non-teaching employes in the classification of custodial, food service (baker and cooks), aides, and clerical, and excluding all professional, supervisory, managerial, confidential and all other employes (Dec. No. 25712)

4. That on October 31, 1989, the Association filed a petition for unit clarification seeking to include certain positions in the bargaining unit; and that the unit status of the following positions/employes remains disputed on the following bases:

<u>Position</u>	<u>Incumbent</u>	<u>Claimed Basis for Continued Exclusion</u>
Server	J. Hewlett	Excluded by parties' prior agreement and lacks community of interest
Elementary School Building Secretary	R. Van Rite	Confidential
Middle School Building Secretary	M. Borlee	Confidential
High School Building Secretary	M. Lemke	Supervisory/Confidential
Middle School Clerical Aide	S. Peters	Excluded by parties' prior agreement and lacks community of
Aide-Noon Hour Supervisor (Elementary School)	Sharon Marks	Excluded by parties' prior agreement and lacks community of interest
Dishwasher	M. Kacinarynski	Excluded by parties' prior agreement and lacks community of interest
Dishwasher	V. Kacmarynski	Excluded by parties' prior agreement and lacks community of interest
Ticket-Taker	L. Pascowicz	Excluded by parties' prior agreement

and lacks community of interest

5. That the administrative team concept is employed by the District and the District thereby encourages its administrators to participate in decisions; that the team (consisting of all Building Principals as well as other administrators) regularly meets and/or corresponds with Superintendent of Schools Yenchesky regarding all personnel matters, transfers, reprimands, assignments, as well as the contract implications of proposals made in negotiations, all District policy decisions and all school building concerns and events which may impact upon labor relations matters; that Robert Joswick (Director of Pupil Services/Exceptional Ed) is a member of the administrative team and utilizes a secretary for his work who is employed part-time by CESA, not by the District; that Joswick handles the majority of the District's labor relations concerns; that he is the designated District-wide representative for grievance handling, contract negotiations and salary and other proposals; that Wanda Richards (Director of Instruction/Curriculum and Staff Development) is a member of the administrative team and her secretary is (Catherine) Penny Bollem who is a member of the bargaining unit at issue; and that Superintendent Yenchesky's secretary, Joan Byrne, has been excluded from the instant bargaining unit as a confidential employe by agreement of the parties.

6. The District operates only one Elementary School, Dickinson School, where 650 students are currently enrolled; that Ruth Van Rite is the incumbent of the Elementary Building Secretary position at Dickinson School and has been in that position for approximately the past 12 years; that Van Rite was specifically excluded as a confidential employe from the voter eligibility list in the initial election herein; that the currently effective job description for the Elementary/Middle School Building Secretary position reads as follows:

- QUALIFICATIONS:
1. High school graduate with general secretarial background.
 2. 1-3 years previous experience.
 3. Typing ability of 55-60 wpm.
 4. Machine dictation or shorthand desirable
 5. Organizational and office management skills.
 6. Public relation and inter-personal skills.
 7. Ability to get along with others.
 8. Computer background.
 9. Literary and communication skills.
 10. "Helping" person.
 11. First Aid training.

REPORTS TO: Building Principal

SUPERVISES: Clerical Aides

JOB GOAL: Provide the building principal with the clerical assistance necessary to manage and operate the instructional and business functions of their respective office.

MAJOR

- RESPONSIBILITIES:
1. Responsible for management of building office.
 2. Secretary to building principal.

3. Receptionist and resource person for school office. Includes students, staff and visitor assistance.
4. Telephone receptionist.
5. Arrange lesson plans in order, record and contact those teachers who do not have them in on time.
6. Publish principal's weekly bulletin.
7. Sort and deliver all incoming mail.
8. Record incoming and outgoing film strips.
9. Check in all packages and verify with purchase order.
10. Send out news letters or other student/parents.
11. Do all principal's correspondence as requested by him/her.
12. Check over the mail for correct postage and sorting "out of town" or "local" mail.
13. Mail student injury letters to parents of injured students.
14. Do requested work from teachers as established by policy.
15. Responsible for inventory and maintenance of supply rooms.
16. Responsible for engaging substitutes for teacher absences and maintaining substitute listing for payroll purposes.
17. Assist in supervision of detention students.
18. Distribute and compile requisitions for necessary supplies and materials.
19. Type and reproduce faculty handbook during summer for the new school year.
20. Check in and out keys for faculty and, at the end of the year, check in grade books along with school keys. File and record for new school year.
21. Type master class schedule for first and second semester, reproduce and distribute.
22. Assist other office personnel when need arises.
23. Assist in scheduling students.
24. Compile student address listing for mailing list.
25. Responsible for completion of teacher absence verification cards, staff time slips.
26. Responsible for maintenance of student attendance records.
27. Reconciling of hot lunch money and tickets.

TERMS OF
EMPLOYMENT:

11 or 12 months per year. Salary and work schedule to be established by the Board.

EVALUATION:

Performance of this job will be evaluated annually.

PAY LEVEL:

Grade 5

This job description indicates the kinds of tasks and levels of work difficulty that will be given this title and shall not be construed as declaring what the specific duties and responsibilities of any particular position shall be. It is not intended to limit or in any modify the right of any supervisor to assign, direct and control the work of employees under supervision. The use of a particular expression or illustration describing duties shall not be held to exclude other duties not mentioned that are of a similar kind or level of difficulty.

that Van Rite does not perform or fully perform tasks listed in the above quoted job description at numbers 5, 8, 12, 13, 16, 23, 26; that Van Rite's hours of work are 7:35 a.m. to 3:35 p.m. five days per week, 52 weeks per year; that Van Rite's last annual salary was \$15,557 (wage grade 5, \$8.35 per hour); that Van Rite's immediate supervisor is Elementary School Principal Allen; that for the past several years, Allen has been the chief spokesman and liaison for the administrative staff with the District concerning administrative wages, hours, and other terms and conditions of employment; that in this capacity, Allen corresponds with Superintendent of Schools Yenchesky several times each year; that also currently employed in the Dickinson School office are Clerical Aides Gussert and Carter; that Van Rite types all of the documents which Allen drafts which he believes are confidential or sensitive; that, for example, in the past year, Van Rite has typed memos and letters from Allen to Superintendent Yenchesky regarding a student's suicide, budgetary considerations of salary and fringe benefit levels for administrative staff, an evaluation of a District teacher, and an evaluation of the District's summer school program, a self-evaluation of Allen, a memo on Support Staff concerns and their reasons for wishing union representation, a memo on District changes in Christmas and Easter vacations, two memos regarding use of staff (Strings Ensemble) and a job and grant/loan recommendation for District teacher; that there have been no grievances filed at the Elementary School during the past four or five years; that if a grievance were filed, Allen's response would be typed by Van Rite, or in her absence, Clerical Aide Gussert; and that Van Rite also types all of Allen's evaluations of the office clerical aides and other support staff personnel at Allen's request.

7. That the District operates one Middle School at which 545 students are currently enrolled; that the Middle School Building Secretary job description is the same as that for the Elementary School Building Secretary; that the current incumbent in the Middle School Building Secretary position is Marilyn Borlee who has held this position since March, 1986; that Borlee was previously known as Marilyn Kopecky (Messmann) and she was specifically excluded as a confidential/supervisory employe from the voter eligibility list in the initial election herein; that Borlee works 40 hours per week, 48 weeks per year; that her current hourly rate is \$7.54; that James Phelan is Principal of the Middle School and is Borlee's immediate supervisor; that Borlee does not perform or fully perform the following numbered responsibilities listed on her job description: 5, 7, 8, 12, 13, 26 and 27; that also currently employed in the Middle School office as Clerical Aides are Sharon Peters and Joy Martin; that Borlee normally types all of the documents which Phelan believes are confidential or sensitive including his answer to grievances; that during the 1988-89 school year, approximately 12 grievances were filed with Phelan and during the 1989-90 school year approximately six or seven grievances were filed with Phelan prior to the instant hearing; that Borlee also types all memos Phelan writes to Superintendent Yenchesky relating to grievances, provisions of the contract Phelan would like changed and Phelan's recommendations concerning administrative concerns, personnel matters and staffing; and that Borlee also normally types letters of non-renewal and letters of reprimand from Phelan to teachers.

8. That there are approximately 575 students enrolled at the District's High School; that the Principal of the High School is Donald Pierce and he has an Assistant Principal working with him, Redge Gobin; that Mary Lemke is the current incumbent of the High School Building Secretary position and she has been so employed for the past seven years; that Lemke was specifically excluded as a confidential/supervisory employe from the voter eligibility list in the initial election herein; that Lemke is the only Building Secretary in the Grade 6 pay scale (currently \$8.35 per hour); that she works 40 hours per week, 52 weeks per year; that also employed in the High School office are Sue Cole, Secretary to Mr. Gobin and Attendance Secretary, Kris Ziemer, Athletic Department Secretary and Student Accounts Secretary, and Jan Liebergen, Guidance Secretary; that the currently effective job description for the High School Building Secretary position is as follows:

- QUALIFICATIONS:
1. High school graduate with general secretarial background.
 2. 1-3 years previous experience.
 3. Typing ability of 55-60 wpm.
 4. Machine dictation or shorthand desirable
 5. Organizational and office management skills.
 6. Ability to get along with others.
 7. Public relation and inter-personal skills.
 8. Computer background.
 9. Literary and communication skills.
 10. "Helping" person.
 11. First Aid training.

REPORTS TO: Building Principal

SUPERVISES: Building office secretaries and aides.

JOB GOAL: Provide the building principal with the clerical assistance necessary to manage and operate the instructional and business functions of their respective office.

- MAJOR RESPONSIBILITIES:
1. Responsible for management of building office.
 2. Secretary to building principal.
 3. Receptionist and resource person for school office. Includes students, staff and visitor assistance.
 4. Telephone receptionist.
 5. Arrange lesson plans in order, record and contact those teachers who do not have them in on time.
 6. Publish principal's weekly bulletin.
 7. Sort and deliver all incoming mail.
 8. Record incoming and outgoing film strips.
 9. Check in all packages and verify with purchase order.
 10. Send out news letters or other student/parents.
 11. Do all principal's correspondence as requested by him/her.

12. Check over the mail for correct postage and sorting "out of town" or "local" mail.
13. Mail student injury letters to parents of injured students.
14. Do requested work from teachers as established by policy.
15. Responsible for inventory and maintenance of supply rooms.
16. Responsible for engaging substitutes for teacher absences and maintaining substitute listing for payroll purposes.
17. Assist in supervision of detention students.
18. Distribute and compile requisitions for necessary supplies and materials.
19. Type and reproduce faculty handbook during summer for the new school year.
20. Check in and out keys for faculty and, at the end of the year, check in grade books along with school keys. File and record for new school year.
21. Type master class schedule for first and second semester, reproduce and distribute.
22. Assist other office personnel when need arises.
23. Assist in scheduling students.
24. Compile student address listing for mailing list.
25. Responsible for completion of teacher absence verification cards, staff time slips.
26. Responsible for maintenance of student attendance records.
27. Reconciling of hot lunch money and tickets.

TERM OF

EMPLOYMENT:

11 or 12 months per year. Salary and work schedule to be established by the Board.

EVALUATION:

Performance of this job will be evaluated annually.

PAY LEVEL:

Grade 6

This job description indicates the kinds of tasks and levels of work difficulty that will be given this title and shall not be construed as declaring what the specific duties and responsibilities of any particular position shall be. It is not intended to limit or in any modify the right of any supervisor to assign, direct and control the work of employees under supervision. The use of a particular expression or illustration describing duties shall not be held to exclude other duties not mentioned that are of a similar kind or level of difficulty.

that for the past two or three years, Lemke has drafted the written evaluations of the office staff, which she normally discusses with Pierce and which both Lemke and Pierce then initial prior to their meeting together with each evaluated employe to discuss the evaluations; that in the past three years,

Lemke has spoken to office staff on three occasions on her own regarding performance concerns, but no actions beyond this counseling were taken by Lemke or the District; that for the same period, Lemke has granted the office aides personal leave, at times without either prior or later approval by Pierce; that when Sue Cole, Attendance Secretary, was hired Lemke participated in the interview process with Principal Pierce and the District's Administrative Assistant DeMeuse; that Lemke asked questions of applicants and made recommendations to Pierce as to whether the applicant could perform the work; that Lemke also had input into the transfer of an employe; that Lemke spends approximately 20 to 30% of her time directing the work of and otherwise supervising the office staff; that Lemke spends from 10 to 20% of her time typing what Pierce believes to be confidential or sensitive letters and memoranda; that among these documents are letters and memos to Superintendent Yenchesky regarding administrative concerns, bargaining unit negotiations, staffing levels and other matters relating to labor relations, as well as Pierce's responses to Grievances filed at the High School; that in 1988-89 several grievances were filed at the High School and in 1989-90 one or two had been filed prior to the date of the instant hearing; that Lemke also fills in for Superintendent Yenchesky's Secretary, Joan Byrneo, who receives four weeks vacation, sick leave and personal days throughout the year; and that since Lemke's employ as High School Building Secretary, there have been no grievances filed by the office staff;

9. That the currently effective job description for the Clerical Aide position is as follows:

- QUALIFICATIONS:
1. Some college or advanced training preferred.
 2. One year previous experience.
 3. Typing speed - 40 w.p.m.
 4. Public relations and interpersonal skills.
 5. General secretarial experience in typing, filing, duplicating machines, etc.
 6. Experience in supervising groups of students in community organizations, such as 4-H, church groups, etc.
 7. First Aid training.

REPORTS TO: Building Principal

JOB GOAL: To provide the building principal with the clerical and supervisory assistance.

MAJOR

- RESPONSIBILITIES:
1. Type tests, worksheets, rosters, etc.
 2. Correct papers.
 3. Print and collate multiple copies of instructional materials.
 4. Assist building secretary. Includes collection of book fees, lunch count and absence slips, answer phone and intercom, enroll new students, give building tours, etc.
 5. Sell lunch tickets.
 6. Bulletin Boards.

TERMS OF

EMPLOYMENT: Nine month year. Salary and work schedule to be established by the

Board.

EVALUATION: Performance of this job will be evaluated annually.

PAY LEVEL: Grade 3

This job description indicates the kinds of tasks and levels of work difficulty that will be given this title and shall not be construed as declaring what the specific duties and responsibilities of any particular position shall be. It is not intended to limit or in any modify the right of any supervisor to assign, direct and control the work of employees under supervision. The use of a particular expression or illustration describing duties shall not be held to exclude other duties not mentioned that are of a similar kind or level of difficulty.

that Clerical Aides are employed in each of the District's school offices and individuals holding the position of Clerical Aide are presently included in the certified bargaining unit described in Finding of Fact 3; that Peters' position was previously held by G. Sauer, who was specifically included on the voter eligibility list in the initial election herein; that Clerical Aide Peters works 16 3/4 hours per week, five days per week, 36 weeks per year at the Middle School; that she currently earns \$4.77 per hour; and that Peters receives no paid sick leave, no retirement benefit, and no vacation leave.

10. That Virginia Kaczarynski and Marian Kaczarynski are occupants of the Dishwasher job classification in the District; that the currently effective job description for a District Dishwasher is as follows:

QUALIFICATIONS: 1. High school graduate.
2. Ability to relate well to students and staff.
3. First Aid training.

REPORTS TO: Head Cook

JOB GOALS: Assist Head Cook with clean-up and dish washing.

MAJOR

RESPONSIBILITIES: 1. Shall work in close relationship with head cook.
2. Washing of trays and other dishes used for food preparation and/or service.
3. Clean-up of area after dish washing is completed.
4. Inventory of supplies used in area.

TERM OF

EMPLOYMENT: Academic year. Salary and work schedule to be established by the Board.

EVALUATION: Job performance will be evaluated annually.

PAY LEVEL: Grade 2

This job description indicates the kinds of tasks and levels of work difficulty that will be given this title

and shall not be construed as declaring what the specific duties and responsibilities of any particular position shall be. It is not intended to limit or in any modify the right of any supervisor to assign, direct and control the work of employees under supervision. The use of a particular expression or illustration describing duties shall not be held to exclude other duties not mentioned that are of a similar kind or level of difficulty.

that Virginia works two hours per day, five days per week, 36 weeks per year in the High School Kitchen; that Virginia was not employed by the District at the time of the election herein; that Virginia receives no benefits other than her wage (\$3.82 per hour currently) and she is not eligible for a retirement benefit; that Marian was employed at the time of the election herein but was not included as either an inclusion or exclusion on the voter eligibility list; that she works 1.5 hours per day, five days per week, 36 weeks per year in the Elementary School Kitchen; and that Marian receives no benefits other than her wage.

11. That Jan Hewlett is the incumbent of the Server job classification, which has the following job description:

QUALIFICATIONS: 1. High school graduate.
2. Ability to relate well to students and staff.
3. First Aid training.

REPORTS TO: Head Cook

JOB GOALS: Assist Head Cook with clean-up and dish washing:

MAJOR

RESPONSIBILITIES: 1. Shall work in close relationship with head cook.
2. Set up for serving meals. Serve in a timely manner.
3. Clean-up of area after service.
4. Inventory of supplies used in area.
5. Preparation and sale of a la cart food items.

TERM OF

EMPLOYMENT: Academic year. Salary and work schedule to be established by the Board.

EVALUATION: Job performance will be evaluated annually.

PAY LEVEL: Grade 2

This job description indicates the kinds of tasks and levels of work difficulty that will be given this title and shall not be construed as declaring what the specific duties and responsibilities of any particular position shall be. It is not intended to limit or in any modify the right of any supervisor to assign, direct and control the work of employees under supervision. The use of a particular expression or illustration describing duties shall not be held to exclude other duties not mentioned that are of a similar kind or level of difficulty.

that the Server position existed at the time of initial election but was not listed as either an inclusion or exclusion on the voter eligibility list; that Hewlett works 3.5 hours per day, 17.5 hours per week, 36 weeks per year as a Server in the High School Kitchen; and that Hewlett receives no benefits from the District other than wages, sick days and the WRS retirement benefit.

12. That the Noon Hour Supervisor Aide, Sharon Marks, works 1 1/4 hours per day, five days per week, 36 weeks per year; that Marks was employed at the time of the initial election but was not listed as an inclusion or exclusion on the voter eligibility list; that Marks receives no benefits other than her wage (\$5.90 per hour); that Marks supervises children in need thereof during the noon hour at the Elementary School; that there is no job description for the Noon Hour Supervisor position; that Marks' normal duties are as follows: she walks the halls at Dickinson School from 11:00 a.m. to 11:10 a.m. to make sure that the first and second graders are going outside after lunch time, she then goes to a room in the school where she watches students who have detention for misbehavior or who must finish their homework, until approximately 12:15 p.m. when Marks is finished with her work day; and that Marks' immediate supervisor is Allen.

13. That the High School Ticket-Taker, Lorraine Pasowicz, works two hours per day, five days per week, 36 weeks per year; that the position of Ticket-Taker was not listed as an inclusion or exclusion on the voter eligibility list for the initial election; that Pasowicz receives no benefits other than her wage (\$4.77 per hour); that there is no job description for the Ticket-Taker position; that the Ticket-Taker's duties are normal as follows: the Ticket-Taker arrives at the High School, picks up bags of money that have been prepared for her and distributes this money to cash boxes, and then goes to the cafeteria and collects lunch tickets and/or money from students as they go through the lunch line; that after all of the students have gone through the line, she takes the money received and helps the Clerical Aides to count and tally it, and that after Pasowicz has completed these duties, she helps around the kitchen, as needed, until her work day is over; and that the Ticket-Taker's work is directed by the Head Cook, Bernice Trinkner, a member of the bargaining unit.

14. That the occupants of the positions of Elementary School Building Secretary and Middle School Building Secretary do not have sufficient access to or involvement in confidential matters relating to labor relations so as to render the occupant of said positions confidential employees.

15. That the occupant of the position of High School Building Secretary exercises supervisory responsibilities in sufficient combination and degree so as to render the occupant a supervisory employe.

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

CONCLUSIONS OF LAW

1. That the occupants of the positions of Elementary School Building Secretary and Middle School Building Secretary are not confidential employees within the meaning of the Municipal Employment Relations Act and, therefore, they are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

2. That the occupant of the position of High School Building Secretary is a supervisory employe within the meaning of Sec. 111.70(1)(o) Stats., and thus not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. There is no agreement between the parties to exclude the positions of Dishwasher, Server, Middle School Clerical Aide, Noon Hour Supervision Aide,

or Noon Hour Ticket-Taker from the bargaining unit represented by the Association.

4. That the positions of Middle School Clerical Aide, Noon Hour Supervision Aide and Noon Hour Ticket-Taker fall within the scope of the parties' agreement, through their Stipulation for Election, that "regular part-time... aides..." be included in the bargaining unit.

5. That the occupants of the positions of Dishwasher and Server possess a substantial community of interest with the occupants of other "food service" positions currently included in the bargaining unit.

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

ORDER 1/

1. That the positions of Elementary School Building Secretary, Middle School Building Secretary, Dishwasher, Server, Middle School Clerical Aide, Noon Hour Supervision Aide and Noon Hour Ticket-Taker are hereby included in the collective bargaining unit described in Finding of Fact 3.

2. That the position of High School Building Secretary shall continue to be excluded from the collective bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 3rd day of October, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

(Footnote 1/ continued on page 15)

1/ 227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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

receipt by the Court and placement in the mail to the Commission.

DE PERE SCHOOL DISTRICT

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

Position of the Parties

District

In its initial brief, the District asserted that the High School Principal's Secretary is a supervisor and that the Elementary and Middle School Principals Secretaries are confidential employes with higher pay, different hours and working conditions than unit employes so that these three positions and their incumbents should be excluded on these grounds; that placing the Secretaries in the unit in question would disrupt the flow of work in the District and place an undue burden on the Superintendent's confidential secretary, in a District serving more than 1500 students and employing more than 150 employes in several buildings. The District also argued that the six food service and aide employes which the Association seeks to include in the instant unit should continue to be excluded based upon the parties' preelection stipulation which clearly excluded "all other employes" and included only "baker and cooks" from among the various food service employes. The District contended that the Association's argument that it somehow misunderstood the proposed unit stipulation is not credible. In addition, the District argued that Clerical Aide Sharon Peters should be excluded from the bargaining unit at issue here on the ground that she works less than 700 hours per year and because Peters' name did not appear on the agreed-upon eligibility list for the last election. The District argued generally, that its long-established practice of not offering employes working less than 700 hours per year District fringe benefits the fact that such employes lack a community of interest with unit members, the fact that all of the disputed employes were employed at the time of the election herein and that their duties and the circumstances surrounding their employment have not changed in any way, provide further support for their continued exclusion from the unit in question.

In its reply brief, the District made clear that it was not arguing that the Elementary School and Middle School Principal's Secretary positions are supervisory, only that the High School Principal's Secretary is a statutory supervisor. The District also made clear in its reply brief that it has argued that the three Principal Secretary positions are confidential, based upon the material they process for the Building Principals as well as the District's need to utilize these positions/incumbents as confidential employes to avoid undue disruption of District services. The District noted that where, as here, the District has a greater volume of labor relations work and a different organizational structure than other Districts as well as a "aggressive and confrontational" labor organization to deal with, a different standard could be applied by the WERC for the utilization and deployment of confidential employes. With regard to the other six positions in question here, the District contended in its reply brief that the Association's claim that Union organizer Schadewald should be held to a lower standard of care in dealing with the election stipulations due to his alleged limited experience, is unfounded and inappropriate where Schadewald admittedly communicated with local employes regarding the proposed stipulations. In addition, Schadewald's claim that he did not understand that the unit description excluded renamed food service employes should be found unpersuasive by the Commission, and the accretion of the disputed food service positions should not be allowed.

The Association filed an initial brief but waived filing a reply brief. In its brief, the Association argued that Commission precedent supports the

inclusion of the three Building Secretary positions and that the record evidence failed to show that any of these secretary positions should be excluded on either their alleged confidential or supervisory status. In this regard, the Association noted that Van Rite has performed no direct supervisory duties and she performs de minimis work which is truly confidential in nature; that Borlee is at most a lead worker with minimal direction and control of office clerical employes and no power influence or responsibility in personnel areas including hiring. The Association noted that the District failed to show that Borlee had actually typed some of the alleged confidential material submitted. With regard to Secretary Lemke, the Association asserted that Lemke does not exercise independent judgment regarding the direction and control of office clerical employes and that others possess greater supervisory authority over office clericals than does Lemke; that Lemke's higher pay rate does not demonstrate that she is paid to supervise and that the District's documents exaggerate supervisory status as they also list other unit employes and/or teachers in that bargaining unit as "supervisors" on District documents. The Association therefore asserted that Lemke is not a confidential employe and that Mr. Joswick's secretary could be used to process "confidential" material so that District operations would not be disrupted. With regard to the other six positions the Association wishes to accrete, the Association argued that the District "withheld information" by not listing these positions as inclusions or exclusions on the voter eligibility list, and that the Association was not informed of the District's policy of excluding employes working less than 700 hours per year from benefits and from representation. Thus, the Association argues it should not be limited by its pre-election stipulations with regard to these questions. The Association contended that it is also a subject of bargaining whether employes should receive insurance and other benefits and that the duties of the six incumbents of the remaining disputed positions reflect a community of interest with unit employes. The fact that these employes had not been allowed to vote in the election should not require their exclusion here, according to the Association, since even had they all voted against representation, the outcome of the 1988 election would not have been changed and it could cause undue fragmentation to exclude these six incumbents from the existing unit.

DISCUSSION:

We turn first to the issue of whether the Elementary, Middle School, and High School Building Secretaries should continue to be excluded from the bargaining unit. The District argues that the High School position is supervisory and confidential, and that the Elementary and Middle School positions are confidential. 2/

Concerning the supervisory status of the High School Building Secretary, Sec. 111.70(1)(o)1, Stats., defines the term "supervisor" as follows:

. . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

2/ Where, as here, the original exclusion of these positions was based upon the incumbents alleged lack of "municipal employe" status, either party can subsequently obtain a ruling from the Commission on whether the positions are indeed held by "municipal employes." See City of Sheboygan, Dec. No. 7378-A (WERC, 5/89).

In its interpretation of the above definition, the Commission has, on numerous occasions, 3/ listed the following factors as those to be considered in the determination of an individual's supervisory status:

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 employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes;
7. The amount of independent judgment exercised in the supervision of employes.

The Commission has also consistently held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employe to be a supervisor.

We conclude that the High School Building Secretary should continue to be excluded based upon the supervisory duties performed by the incumbent. Lemke has performed the only written evaluations of the four office clerical employes in the High School for the past several years, which Principal Pierce has approved without change. Lemke has also approved personal leave for office clerical employes without prior or subsequent approval from the Principal. She had a significant role in the hire of clerical Sue Cole, regularly spends 20-30 percent of her time directing the work of the clerical staff and is compensated at a higher pay level than that of the Elementary or Middle School Secretary. In these circumstances, we believe Lemke possesses supervisory authority in sufficient combination and degree to warrant exclusion of the position and incumbent as a supervisor. Given this conclusion, we need not and do not decide whether Lemke performs confidential duties sufficient to exclude the position and incumbent as a confidential employe as well.

In regard to Marilyn Borlee, the incumbent in the Middle School Building Secretary position, and Ruth Van Rite, the incumbent in the Elementary School Building Secretary position, we conclude that these positions and their incumbents do not perform confidential duties sufficient to exclude them from the collective bargaining unit as confidential employes.

3/ City of Milwaukee, Dec. No. 6960 (WERC, 12/64); Sauk County, Dec. No. 17201-A (WERC, 6/87).

The Commission has consistently held that for an employe to be considered confidential, such an employe must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purposes, it must be 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 and grievance handling between the bargaining representative and the employer; and
- 2) is not information which is available to the bargaining representative or its agents. Milwaukee VTAE, Dec. No. 8736-B (WERC, 6/79).

In addition, as the Commission stated in Howard-Suamico School District, Dec. No. 22731-B (WERC, 11/88),

. . . Despite the fact that de minimis exposure to confidential work is generally not a basis for finding an employe to be confidential, the Commission has recognized that legitimate organizational needs may require exclusion of an employe as confidential if, despite the de minimis nature of the confidential work, it would be duly disruptive to have said work performed by another confidential employe. . . .

The District argues that the amount of confidential material which Principals Phelan and Allen generate is significant, that the assignment of this confidential typing to a District employe other than to each Principal's secretary would disrupt District operations, and that the inclusion in the bargaining unit of these positions would destroy the important, trusting and confidential relationship which should exist between each Principal and his/her personal secretary. However, the record does not render these arguments persuasive.

While the District presented numerous examples of the types of documents it believed to be confidential, most of the documents in question are either unrelated to collective bargaining and contract administration or are available to the Association or the employe. Thus, we conclude that the amount of confidential work performed by these two employes is not significant. By way of example, documents typed for Principal Allen in his role as spokesperson for the administrative personnel are not confidential labor relations material. Allen is not functioning in a collective bargaining capacity as to these documents because there is no statutorily authorized collective bargaining relationship between the administrators and the District. Furthermore, as Allen is in effect functioning as spokesperson for the administrators "union" and as the confidential exemption from "municipal employe" status is designed to protect the employer's interests, the District's argument as to these matters is not persuasive.

Nor do we believe that transfer of the typing of the confidential labor relations work will be unduly disruptive of District operations. The

Superintendent's Secretary, the CESA Secretary of the Director of Pupil Services, and, pursuant to this decision, the High School Building Secretary are all available for such work as the need arises and Principal Phelan's testimony satisfies us that it is physically feasible to share secretarial services between buildings. As indicated earlier herein, we are also persuaded that the volume of confidential labor relations work which would need to be "shared" is far more limited than the District has asserted.

Lastly, as to the District's concern that inclusion of these employees in the unit will compromise the trust currently present between the Principal and the employees, we initially note that the record does not establish that unit status will necessarily produce this result. To the extent the District is arguing that unit inclusion inevitably introduces a level of potential conflict 4/ between employe and supervisor, we can only note that such potential conflict has not been recognized by the Legislature as a basis for depriving "municipal employees" of their collective bargaining rights.

As to the unit status of the positions of Server, Dishwasher, Middle School Aide, Noon Hour Supervisor Aide and Ticket-Taker, the District argues that because these positions were excluded from the bargaining unit at the time the certification election was conducted, 5/ the Association ought not now be allowed to seek inclusion. If we were satisfied that an agreement existed between the parties to exclude these positions, we would find this District argument persuasive and would dismiss the Association's petition as to these positions. 6/ However, the facts do not satisfy us that such an agreement exists.

When reaching our decision in this regard, it is important to note that Sec. 111.70(4)(d)2.a., Stats., gives the Commission the statutory obligation to determine "the appropriate bargaining unit for the purpose of collective bargaining." However, to accommodate the parties' interests, we have been willing to honor parties' agreements regarding composition of bargaining units, but only if the integrity of the Municipal Employment Relations Act (MERA) is not compromised and only so long as we are satisfied that all parties clearly understood the scope of their agreement. If the unit agreement compromises MERA rights or was not clearly understood by all parties, we proceed to meet our statutory obligations under Sec. 111.70(4)(d)2.a. Stats.

4/ Of course, inclusion of an employe in the bargaining unit does not prevent the District from responding to employe performance concerns. Thus, the District remains able to respond to protect its interests if it believes an employe is inappropriately disclosing confidential labor relations or other sensitive information.

5/ This argument would not appear applicable to the Middle School Clerical Aide position held by Peters. The record reflects that Peters holds a position formerly held by G. Sauer, which position was included on the list of unit inclusions to which the parties agreed at the time of the certification election. The Aide position held by Sauer was located at the Elementary School and was subsequently transferred to the Middle School. As this change in location would seem to have no impact on the parties' agreement to include Clerical Aides in the unit and as the parties' original eligibility list included a Middle School Aide position, we are satisfied that Peters' position should be included based upon the parties' 1988 eligibility agreement.

6/ We honor such agreements unless the positions have been materially affected by changed circumstances, or the resultant unit is repugnant to the Municipal Employment Relations Act, or the inclusion or exclusion was based upon an agreement that the positions were or were not supervisory, confidential, managerial, executive, or professional. See generally City of Sheboygan, Dec. No. 7378-A (WERC, 5/89). None of these exceptions are claimed to exist here.

The Association's petition for election sought a broad non-professional unit including "aides" and "food service" employees and excluding only those employees already represented (professional employees) and employees who are ineligible for representation because they are not "municipal employees" under Sec. 111.70(1)(i), Stats. (confidential, managerial, supervisory employees). The District responded with a proposed unit description which differed from the Association's through use of the phrases "food service (bakers and cooks)" as an inclusion and "all other employes" as an exclusion. (emphasis added)

The District credibly argues that by its proposed changes in the unit description, it intended to convey an exclusion from the unit of all employees working fewer than 700 hours per year. However, this intent was never conveyed to the Association and the 700 hours exclusion is not expressly stated in the District's proposal.

Nonetheless, through the addition of the emphasized phrases quoted above, the absence of the positions in question from the "inclusions" list which accompanied the District's July 25 letter quoted in Finding of Fact 3, and the absence of any Association objection to the content of the "inclusions" list, it could still reasonably be concluded the Association had clearly agreed to exclude the now disputed positions from the unit. However, the absence of these positions from the District's July 25 "exclusion" list injects an "element of uncertainty which prevents us from concluding that both parties clearly understood their unit agreement to exclude the now disputed positions.

When presented with a list of "inclusions" and "exclusions," the Association could reasonably conclude that if the District was proposing to exclude the disputed positions, said positions would have been listed as "exclusions." Further, there is no evidence that the Association was ever advised verbally by the District that there was a second unlisted category of "exclusions" in the District's July 25 unit proposal (i.e. those employees working fewer than 700 hours per year). Given the foregoing, we conclude that the Association's acceptance of the District's proposed unit description is not sufficient to establish that an agreement existed to exclude the positions in question. We now turn to the question of whether it is otherwise appropriate to include these positions in the Association's unit.

The District contends that the employees in question are distinct from unit employees because of the minimal number of hours worked and, except for the Server, the resultant lack of fringe benefits. However, we have consistently found it appropriate to include all regular part-time employees in the same unit as all regular full-time employees. When determining whether an employee is "regular part-time," we have never used eligibility for benefits under the Wisconsin Retirement System or an employer generated fringe benefit eligibility standard to be a basis for separating one group of employees who work on a regular basis from another group to work on a regular basis but whose yearly aggregate hours are greater. In our view, it has always been the regularity of employment not the number of hours worked which generates the community of interest sufficient to include all regular part-time employees in the same unit.

Thus, we reject this District argument as a basis for continued exclusion. As we are otherwise satisfied that the skills, work place, compensation ranges, and supervision of the disputed position are similar to at least some of the positions presently in the unit, and as continued exclusion of these employees has the potential to unduly fragment bargaining units, we conclude that these disputed positions shall all be included in the existing unit. 7/

7/ We also note that the positions of Middle School Clerical Aide, Noon Hour Supervision Aide, and

Dated at Madison, Wisconsin this 3rd day of October, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

Noon Hour Ticket-Taker fall within the scope of the parties' agreement, through their Stipulation for Election, that "regular part-time aides" be included in the unit.