

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :   
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WISCONSIN EDUCATION ASSOCIATION COUNCIL : Case 16   
: No. 45218 ME-3096   
Involving Certain Employes of : Decision No. 27162   
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MELROSE-MINDORO SCHOOL DISTRICT :   
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Appearances:

Mr. Jeffrey L. Roy, West Central Education Association, 105 - 21st Street, North, Menomonie, Wisconsin 54751, on behalf of the Association.

Mr. Stephen J. Holzhausen, Membership Consultant, Wisconsin Association of School Boards, Inc., 2005 Highland Avenue, Eau Claire, Wisconsin 54701, on behalf of the District.

FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER DISMISSING PETITION FOR ELECTION

On January 30, 1991, the Wisconsin Education Association Council filed with the Wisconsin Employment Relations Commission a petition by which it sought a representation election for a claimed bargaining unit described as the bus drivers and bus mechanics in the employ of the Melrose-Mindoro School District. Following unsuccessful attempts by the Commission to obtain a stipulation for election, hearing in the matter was held on July 17, 1991, in Melrose, Wisconsin, before Examiner Stuart Levitan, a member of the Commission's staff. A steno-graphic transcript of the hearing was prepared and submitted to the parties by August 9, 1991. The Association and District filed written briefs on September 9, 1991. The Commission, being fully advised in the premises, hereby makes and issues the following Findings of Fact, Conclusion of Law, and Order Dismissing Petition for Election.

FINDINGS OF FACT

1. The Wisconsin Education Association Council, hereafter WEAC or the Association, is a labor organization with offices at P.O. Box 8003, Madison, Wisconsin 53708-8003.

2. The Melrose-Mindoro School District, hereafter the District, is a municipal employer with offices at Route 2, Box 300, Melrose, Wisconsin 54751. The only District employes currently represented for the purposes of collective bargaining are certificated teachers who are represented by the Association.

3. The District employs the following nonprofessional support staff employes:

- 12 bus drivers
- 11 custodial/maintenance
  - 6 custodian/bus drivers
  - 2 custodians
  - 1 bus mechanic
  - 1 maintenance/mechanic
  - 1 maintenance/transportation supervisor
- 9 food service
- 11 aides
- 3 office
- 2 secretaries

- 1 bookkeeper

The Association seeks an election in a bargaining unit consisting of the 12 bus drivers and the one bus mechanic. The District contends that a unit consisting of all support staff is appropriate. The parties agree that the maintenance/transportation supervisor could be excluded from the Association's proposed unit as a supervisory employe. As the Association does not seek an election involving custodial/maintenance employes, food service workers, aides, secretaries or the bookkeeper, the parties did not litigate the potential supervisory or confidential status of any of these employes.

4. The 12 bus drivers transport students on regular runs to and from schools and must possess a Commercial Driver's License. They are also responsible for cleaning the interior and exterior of their bus. The six custodian/bus drivers perform minor mechanical repairs, some cleaning, and serve as bus drivers during extra-curricular trips and when a substitute is needed on a regular run. The custodian/bus drivers must also possess a Commercial Driver's License. Five of the six custodian/bus drivers spend no more than 7% of their time driving; the sixth divides her time during the school year 75% driving a regular route and 25% transporting hot lunches from the kitchen to various buildings and during the summer performs 100% custodial work. The two custodians have the primary cleaning responsibilities in the school buildings in addition to performing minor repairs. The bus mechanic is responsible for the repair and maintenance of all buses and on rare occasions will drive a bus. The maintenance mechanic has general maintenance and repair responsibilities for District facilities and in emergency situations will repair buses.

5. Bus drivers, custodian/bus drivers, custodians and mechanics are all supervised by the one person who holds the positions of the Maintenance Supervisor and Transportation Supervisor. For at least the past 16 years, these two positions have been combined and held by a single District employe.

6. Food service employes have responsibility for preparation and service of lunch to students and are supervised by the Food Service Supervisor.

7. Aides maintain materials in the library, assist students and teachers in the classroom, maintain audiovisual materials, and assist in the use of equipment. All aides also perform certain clerical work and are supervised by the school principal. The Secondary Secretary performs a wide variety of clerical and related responsibilities and is supervised by the high school principal. The Bookkeeper performs various payroll and bookkeeping functions. The Executive Secretary performs various functions for and is supervised by the Superintendent of Schools.

8. During the 1980's, after discussions with various members of the support staff, the District established a support staff wage structure referenced to the wage rate of the Bookkeeper, the highest paid non-professional position. Bus drivers, custodian/bus drivers, custodians and mechanics are paid 79 - 85% of the wage rate of the Bookkeeper. Food service pay ranges from 50 - 70% of the Bookkeeper rate. Secretarial pay ranges from 75% - 100% of the Bookkeeper rate with aides being paid at a 64% rate.

9. All bus drivers and aides work a 9 month schedule with some drivers and aides working an additional month under a supplemental contract during summer school. Food service employes work a 9 month schedule. Custodial/maintenance and office employes work a 12 month schedule.

10. Bus drivers work a split morning/afternoon shift. Prior to the

1991-92 school year, with one possible exception, bus drivers worked less than 20 hours per week. Effective with the 1991-1992 school year, it is anticipated that three of the 12 drivers will work more than 20 hours per week. Custodial/maintenance employees work 40 - 45 hours per week. Food service employees work 15 - 35 hours per week. Aides work approximately 35 hours per week with office personnel working 40 hours per week.

11. Bus drivers and the bus mechanic have a primary work location which is distinct from the primary work location of all other employes. However, the bus mechanic's primary work location differs from that of the bus drivers.

12. Support staff working 12 months a year (custodial/maintenance and office employes) are eligible for 7 holidays, 12 sick leave days per year accumulated up to 70 days with an annual payout of \$10 for each day in excess of the maximum accumulation, 2 personal days deducted from sick leave, 2 emergency days, two weeks vacation, health, dental and disability insurance benefits, and participate in the Wisconsin Retirement System. Support staff working 9 months a year (bus drivers, food service, aides) and more than 20 hours per week (all aides, some bus drivers and food service) are eligible for 4 - 5 paid holidays, nine sick leave days accumulated up to 60 days with an annual payout of \$10 for each day in excess of the maximum accumulation, 1 personal day deducted from sick leave, 2 emergency days, health, dental and disability insurance benefits, and participate in the Wisconsin Retirement System. Support staff working a 9 month schedule and less than 20 hours per week (most bus drivers and some food service) are eligible for no fringe benefits with the exception of bus drivers who receive five non-accumulating sick days.

13. Beginning in 1989-1990, when determining the wages, hours and conditions of employment of the support staff, the District followed an informal procedure which involved meetings between a support staff committee and the Superintendent of Schools and with recommendations from the Superintendent then submitted to the Board of Education for its unilateral implementation. The employe group consisted of two custodian/bus drivers, a food service worker and an aide. Prior to 1989, the Superintendent had separate discussions with various employes, the results of which were then presented as a package to the Board with the Superintendent's recommendation. During the 1980's, the bus drivers separately and ultimately successfully lobbied the District for sick leave benefits and pay parity for special education and regular bus runs.

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

#### CONCLUSION OF LAW

A bargaining unit consisting of bus drivers and the bus mechanic employed by the Melrose-Mindoro School District is not an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2 a., Stats.

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

#### ORDER 2/

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2/ 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

The petition for election is dismissed.

Given under our hands and seal at the City of  
Madison, Wisconsin this 14th day of February,  
1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Herman Torosian, Commissioner

\_\_\_\_\_  
William K. Strycker, Commissioner

I concur

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A. Henry Hempe, Chairperson

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following the procedures set forth in Sec. 227.53, Stats.

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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.

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(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.

MELROSE-MINDORO SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER DISMISSING PETITION FOR ELECTION

POSITIONS OF THE PARTIES

In support of its petition, the Association asserts and avers as follows:

The question for the Commission is not whether a unit of bus drivers and mechanics is the most appropriate, but only that it be an appropriate unit. Here, even acknowledging the anti-fragmentation policy, the evidence supports a finding that the bus drivers and mechanics share a community of interest sufficient to establish that such a unit is appropriate.

The duties and skills of the subject employes are distinct from those of all other employes. For example, the subject employes have 33 separate job duties; the lunch program employe has one job duty. Further, the drivers duties include such matters as being responsible for the safety, transportation and discipline of students, which in degree and combination are unique from any other employe. Moreover, the drivers have restrictions (a ban on consuming alcohol within six hours of starting a bus run) and licensing (a commercial drivers license) which are unique among District employes as conditions of employment.

The wages, hours and conditions of employment of the subject employes are distinct as compared to those of other employes. The hours are distinct in that the drivers, alone among District employes, work a split schedule of a morning and afternoon route. A comparison of benefits reveals an equally great distinction, as follows: The baker, cook, library aide, audiovisual aide, mechanic, custodian, cleaning person, and secretaries all receive health, dental and disability insurance, paid holidays, participation in the Wisconsin Retirement System and the accumulation of sick leave to at least 60 days; except for the mechanic, custodian and central office executive secretary, they all also receive at least one personal day off; the mechanic, custodian and secretaries also receive at least two weeks vacation. The bus drivers, on the other hand, receive no health, dental or disability insurance, get no holiday, vacation or personal day, are not participants in the WRS, and cannot accumulate sick leave. While the issue of insurance was the subject of conflicting testimony, the record establishes that there exists no clear and defined District policy to provide insurance even to bus drivers working more than 20 hours per week. Clearly, the bus drivers do not share the same benefits as other support staff employes.

The bus drivers share common supervision with the

custodians, but only because the District has chosen to have one individual fill the two distinct positions of Bus Driver Supervisor and Custodian Supervisor. Further, the bus drivers have no common supervision with any other employees.

The bus drivers and mechanics have a separate and distinct worksite, in that their work place is their bus and the bus garage. No other employee uses the buses or performs duties at the bus garage.

The bargaining practice has varied from year to year, but nothing in the record shows that the support staff as a whole, including the drivers, did, as the District argues, bargain as a group. The contracts for 1989-90 and 1990-91 reflect all employees in two aspects; custodians only in two aspects; bus drivers in three aspects; part-time employees who are not bus drivers in one aspect, and all employees who are not bus drivers in one aspect. Moreover, the District's admission that there are no records maintained reflecting any negotiations with support staff, and the District's failure to provide testimony on this point, further show that the support staff did not bargain as one group.

The unit sought by the Association will not result in undue fragmentation of bargaining units. The Commission has not infrequently approved units consisting of only one category of school support staff employee. Further, the size of this unit (between 9 and 10.5 employees) is reasonable for representation, and, in this district, very average.

Finally, the subject positions share a community of interest distinct from that of other employees, in that they have both requirements and responsibilities which are unique as conditions of employment.

Accordingly, as the bus drivers/mechanics are the only employees seeking representation, and as the subject employees constitute an appropriate bargaining unit, an election should be directed in the unit as sought.

In support of its position that the petition should be dismissed, the District asserts and avers as follows:

As a bargaining unit consisting of only bus drivers and bus mechanics would result in undue fragmentation, and is not justified by a unique community of interest of the subject employees, the sought bargaining unit is not an appropriate one.

Pursuant to the statutory mandate to avoid undue fragmentation wherever possible, the Commission must balance stability with the need to ensure that the unique interests of a given group of employees not become subordinate to the interests of another



bargaining group. Here, creation of the sought unit would result in undue fragmentation, potentially requiring the District to negotiate with multiple bargaining units. The potential for six bargaining units for the 42 employees would obviously be highly burdensome.

Further, there is no evidence the interests of the bus drivers have been subordinated to the interests of other employees. In 1989, the employee negotiators were two custodian/bus drivers, a food service worker and a teaching aide; they were successful in achieving the wage and benefit goals of the bus drivers, particularly regarding sick leave days. Bus drivers were not formally on the negotiating team because, (a), the employees wanted to have on their team a number equal to that on the Board's team, and (b), no bus driver had sufficient interest to be on the bargaining team. Thus, because the interests of the subject employees have been well-represented by other classifications of support staff employees, there is no need for a separate bargaining unit.

The bargaining history shows that the District has met with representatives of all classifications of support staff to discuss wages, hours and conditions of employment. The District receives input across-the-board, and implements changes in a like manner.

The wages and fringe benefits are similar for all employees of the District, and the hours and conditions of employment are not so different as to justify a separate bargaining unit for the subject employees. The wages of all employees are reflected on a master schedule which compares all positions on the same standard. Allowing for distinctions for nine and 12 - month employees, all support staff working more than 20 hours per week receive an amount of sick leave, personal leave, emergency leave and holidays. The only benefit bus drivers appear to have is five days of sick leave, non-accumulative.

While testimony on the question of whether bus drivers working more than 20 hours per week may appear somewhat conflicting, unrefuted testimony makes clear that any employee, regardless of classification, meeting that threshold becomes eligible for that benefit. Although the superintendent could not cite an official school policy on this point, the question is moot because there was never a time prior to the 1991-1992 school year that any bus drivers met the 20-hour test; when a bus driver did meet the threshold for the 1991-1992 school year, however, the District was prevented from offering the benefits because the pendency of the representation petition, filed January 31, 1991, meant it would have been a prohibited labor practice for the District to make any changes in the conditions of employment of the support staff employees. The proposals reflected in exhibit 11 were never acted

upon, and cannot be given weight refuting the facts of this clear testimony.

Further, there is nothing significantly different about the hours worked by the bus drivers, other than that drivers assigned to a particular route will work a split shift. Other support staff work during the day; some staff work evening. There is nothing to the matter of hours worked that would justify a separate unit.

Nor are the duties and skills of the subject employes substantially distinct from those of other support staff. Other employes are just as responsible for supervision, safety and discipline as are the bus drivers. The requirement of a commercial drivers license is also not probative; as its conditions are similar to those for a regular drivers license, it's not unduly difficult to obtain; further, since the District plans to continue using custodians as bus drivers, and a CDL is required by anyone who drives a bus, the duties and job requirements of these two classifications remain very similar. As six of the nine custodians devote between five and 75 percent of their time to driving extra-curricular routes, a particularly close relationship exists between the bus drivers and the custodians/drivers. A separate bargaining unit of bus drivers could severely hamper the District's ability to assign extra-curricular routes.

As all support staff work with students in a non-professional capacity in support of the District's educational mission, they all share a community of interest with each other. The Association's position must be dismissed on this point alone.

The subject employes also share common supervision with the custodial employes, under the Transportation/Maintenance Supervisor. The Association's attempt to characterize the bus driver's indirect supervision cannot be taken seriously.

While the primary work site of the drivers is their bus, they do pick up and drop off at the schools, where all other support staff work. In any event, the criteria of common/disparate work site deserves little weight.

Accordingly, because a separate unit would result in undue fragmentation, and is not justified on the grounds of bargaining history, unique community of interest, commonality of wages and fringe benefits, nature of duties and common supervision, the petition for a bargaining unit of bus drivers and bus mechanic must be dismissed.

#### DISCUSSION

Section 111.70(4)(d)2.a., Stats., provides in pertinent part:

The commission shall determine the appropriate bargaining unit for the purposes 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. . . .

When exercising our statutory discretion to determine whether a proposed bargaining unit is appropriate, we consistently 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 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. 3/

The phrase "community of interest" as used in Factor 1 refers to a consideration of whether the employees participate in a shared purpose through their employment. 4/ In our decisions, we also use the phrase "community of interest" when summarizing our consideration of Factors 2 - 5 above, by which we determine whether employees share similar interests. Thus, when evaluating whether employees in a proposed unit share a community of interest, we examine factors 1 - 5 to determine whether the employees involved share a common purpose and similar interests. 5/

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2/ Arrowhead United Teachers v. WERC, 116 Wis.2d 580 (1984).

4/ Supra.

5/ As the Court noted in Arrowhead at 592:

. . . when reviewing the commission's decisions, it appears

The fragmentation criterion reflects our statutory obligation to "avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal workforce." 6/

The bargaining history criterion 7/ 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 employe/ employer relationship. 8/

Based upon long standing Commission precedent, we believe it is well understood by the parties that within the unique factual context of each case, not all criteria deserve the same weight 9/ and thus a single criterion or a combination of criteria listed above may be determinative. 10/

Applying the facts of this case to the community of interest criteria, we reach the following conclusions.

The bus drivers and bus mechanic do not have a "community of interest" distinct from other non-professional employees. All non-professional staff share the purpose of supporting the educational process. Blue collar employees support the process by maintaining and providing a satisfactory physical environment. More specifically, the maintenance and custodial employees provide safe and clean buildings. Food services employees prepare and serve meals. Bus drivers and custodian/bus drivers transport students to school in a clean and safe environment.

The primary duties and skills of the bus drivers and bus mechanic are distinct from those of other support staff. However, other blue collar employees (the six custodian/bus drivers) occasionally share duties and skills of driving a bus or performing bus maintenance (the maintenance mechanic).

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that the concept (community of interest) involves similar interests among employees who also participate in a shared purpose through their employment. (Emphasis supplied.)

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

7/ Bargaining history is a distinct labor relations concept which should be analyzed separately from community of interest. Our concurring colleague finds bargaining history is a component of the community of interest analysis. See Adams County, Dec. Nos. 27093 and 27094 (WERC, 11/91).

8/ Marinette School District, Dec. No. 27000 (WERC, 9/91).

9/ 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). With respect to our colleague's criticisms of the 7 Factor Test (P1, last paragraph of concurrence), we simply do not agree with his assessment.

10/ 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).

Further, during the school year, another employe drives a bus 75% of the time and transports food for the food service department the remaining 25%. During the summer this same employe spends 100% of her time as a custodian. The fact that employes perform work in different job classifications is particularly important.

The wages and fringe benefits of the bus drivers and bus mechanic are not distinctive. All support staff are paid based on a benchmark analysis system derived from the wage rate paid to and responsibilities of the bookkeeper. Bus drivers, custodian/bus drivers, custodians and mechanics are paid 79 - 85% of the bookkeeper rate. Food service pay ranges from 50 - 70% of the bookkeeper rate. Secretarial pay is in the 75 - 100% range with aides at 64%.

While bus driver eligibility for fringe benefits is not entirely clear from the record, we are ultimately satisfied that bus drivers who work more than 20 hours per week would receive the same fringe benefits as do all other support staff personnel who meet that 20 hour threshold. Except for five days of sick leave, those bus drivers (the majority) who work less than 20 hours share an absence of any fringes with those food service workers who also fall below the 20 hour threshold.

The hours of the bus drivers (but not, however, the bus mechanic who is included in the unit sought) differ to some extent from those of other employes, in that the bus drivers work a split shift. The bus drivers, as do some other support employes, work a school year (9 months) schedule. Some bus drivers, as well as some school year support employes, may work an additional month during the summer.

Bus drivers and the bus mechanic do not have separate supervision but rather like the bus driver/custodians and the custodians, are supervised by the Maintenance/Transportation Supervisor. While published job descriptions used by the District in the past indicate separate positions of Maintenance Supervisor and Transportation Supervisor, currently, and at least for the past four years, the same individual has held both positions. Moreover, an organizational flow chart received into evidence has both custodians and bus drivers reporting to a position labeled "Maintenance and Transportation Supervisor" (with the custodians also reporting to respective building principals). Thus, based on current practice of several years duration, we are satisfied that the bus drivers and custodians have common, shared supervision.

The primary workplace of the bus drivers is distinct from other employes including the bus mechanic who is also included in the unit sought. The school bus workplace is, moreover, a work-place which is shared, to a limited extent, with six custodian/bus drivers who bus students to and from extra-curricular events and substitute for the home-school route drivers and by the one employe who drives bus 75% of the time during the school year.

Based upon the foregoing, we conclude the bus drivers and one bus mechanic do not possess a separate and distinct community of interest. Based upon the same information, however, we do find a distinct community of interest among the bus drivers, bus mechanics, custodian/bus drivers, custodian/maintenance, maintenance mechanic and food service personnel.

Regarding the fragmentation mandate, the District argues that it would be highly burdensome to compel it to bargain with five different support staff units (in addition to the existing unit of certificated teachers) ranging in size from three to 13 employes. We acknowledge the District's concern but note that even if we concluded that the unit sought by the Association was appropriate, that conclusion would not automatically lead to the creation of

four additional support staff units. We do conclude, however, given the facts in this case that the establishment of the separate bus driver/bus mechanic unit would unduly fragment the District's support staff workforce.

The bargaining history criterion is not particularly determinative in this case. The record demonstrates a mixed practice in that the support staff has been dealt with both as a total group as well as subgroups on some occasions. Most recently, however, the Superintendent has met with a group of support staff representatives in order to formulate wage and benefit proposals for the Board's consideration.

Reviewing the foregoing, we find that only the factors of separate primary work site, distinctive primary duties and skills and, to a limited extent, distinct work schedule, support the appropriateness of a separate unit sought herein. Shared supervision, the absence of distinctive wages and fringe benefits, the presence of some shared duties, the absence of a consistently distinctive bargaining history, the absence of a distinctive purpose, and fragmentation all support a conclusion that the unit sought is not appropriate. Thus, on balance, we conclude that the unit is not appropriate and have dismissed the petition.

We acknowledge that as argued by the Association, we have found bus driver units appropriate. However, as noted earlier, each case must be evaluated based upon its unique facts. That evaluation in this case produces a result that the unit sought herein is not appropriate.

As we noted earlier herein, the facts in the record do demonstrate that all blue collar employees possess a community of interest. Consideration of the fragmentation and bargaining history in the context of this community of interest lead us to conclude that a blue collar unit would be appropriate under Sec. 111.70(4)(d)2.a., Stats.

Dated at Madison, Wisconsin this 14th day of February, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Herman Torosian, Commissioner

\_\_\_\_\_  
William K. Strycker, Commissioner

## Concurrence

I concur with the result my colleagues reach in this matter. It is fair to add that I have no quarrel with the factors they cite, and I believe they have competently applied those factors to the facts herein.

I continue, however, to be uncomfortable with the organizational form of the 7 Factor Test on which my colleagues rely. This is not to say the factors, themselves, are inappropriate. They are not. This is to say, however, that insofar as the 7 Factor listing suggests that each item is free-standing and of equal value, I find it to be confusing and even misleading.

My colleagues respond to this concern by asserting that "(n)ot all factors are given the same weight," a paraphrase of Commission dicta which appeared in two cases issued eight and nine years ago, respectively, and once more in 1990. It's true enough. On reflection, however, this may merely add to the confusion, for nowhere have we explicated which factors we deem to be the heaviest, or whether their weight varies depending on the case.

Inferentially, perhaps, it is possible to gain some sense of my colleagues' "weighting system" in this case. In their discussion of the term "community of interest," for instance, my colleagues correctly advise that past Commission decisions have used that term in summarizing Factors 2 through 5. This seems to suggest that they view these factors more as "sub-factors," and, thus, by inference, individually of lesser weight than those remaining. I do not disagree. From my perspective, I see no reason why that view should not be consistently applied on a prospective basis.

I am in further agreement with my colleagues' acknowledgment of the definitional duality given the term "Community of Interest" by the Wisconsin Supreme Court: ". . . when reviewing the commission's decisions, it appears that the concept (community of interest) involves similar interests among employes who also participate in a shared purpose through their employment." (Emphasis supplied) 11/ Given this acknowledgment, it is disappointing that my colleagues' analysis does not more greatly reflect it.

In summary, the 7 Factor Test is an analytical construct I find to be, at best, "helter-skelter." While past and current Commissioners have attempted to apply it in a conscientious fashion since its first recitation in 1978, 12/ we have been forced to buoy it, from time to time, with adroit arguments which smack of make-shift expediency and seemingly shifting weights and priorities. Perhaps we needn't restate it today. I predict, however, that there will come a time when we deem it helpful to do so.

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11/ Arrowhead United Teachers v. WERC, 116 Wis.2d 580, 592, 342 N.W.2d 909 (1984).

12/ Lodi Jt. School District, Dec. No. 16667 (WERC, 1978).

Dated at Madison, Wisconsin this 14th day of February, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairperson