

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
SCHOOL PROFESSIONAL AND EMPLOYEES : Case 7  
ASSOCIATION OF KENOSHA COUNTY : No. 46452 ME-3172  
Involving Certain Employes of : Decision No. 27427  
BRISTOL SCHOOL DISTRICT NO. 1 :  
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In the Matter of the Petition of :  
SCHOOL PROFESSIONAL AND EMPLOYEES : Case 24  
ASSOCIATION OF KENOSHA COUNTY : No. 46755 ME-3189  
Involving Certain Employes of : Decision No. 27428  
CENTRAL HIGH SCHOOL DISTRICT :  
OF WESTOSHA :  
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In the Matter of the Petition of :  
SCHOOL PROFESSIONAL AND EMPLOYEES : Case 15  
ASSOCIATION OF KENOSHA COUNTY : No. 46457 ME-3174  
Involving Certain Employes of : Decision No. 27429  
RANDALL CONSOLIDATED JT. NO. 1 :  
SCHOOL DISTRICT :  
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Continued

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In the Matter of the Petition of :  
SCHOOL PROFESSIONAL AND EMPLOYEES : Case 11  
ASSOCIATION OF KENOSHA COUNTY : No. 46458 ME-3175  
Involving Certain Employes of : Decision No. 27430  
SALEM CONSOLIDATED GRADE SCHOOL, :  
JOINT DISTRICT NO. 2 :  
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In the Matter of the Petition of :  
SCHOOL PROFESSIONAL AND EMPLOYEES : Case 12  
ASSOCIATION OF KENOSHA COUNTY : No. 46497 ME-3176  
Involving Certain Employes of : Decision No. 27431

SALEM JOINT SCHOOL DISTRICT NO. 7  
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 In the Matter of the Petition of  
 SCHOOL PROFESSIONAL AND EMPLOYEES  
 ASSOCIATION OF KENOSHA COUNTY  
 Involving Certain Employes of  
 WHEATLAND CENTER SCHOOL DISTRICT  
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Case 13  
 No. 46545 ME-3182  
 Decision No. 27432

In the Matter of the Petition of  
 SCHOOL PROFESSIONAL AND EMPLOYEES  
 ASSOCIATION OF KENOSHA COUNTY  
 Involving Certain Employes of  
 WILMOT GRADE SCHOOL DISTRICT  
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Case 20  
 No. 46761 ME-3190  
 Decision No. 27433

Appearances appear on page 3

Appearances:

- Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the School Professional and Employees Association of Kenosha County.
- Michael, Best & Friedrich, Attorneys at Law, by Mr. John J. Prentice, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, appearing on behalf of Bristol School District No. 1.
- Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Daniel G. Vliet, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-3101, appearing on behalf of Central High School District of Westosha.
- Mr. David R. Friedman, Attorney at Law, 30 West Mifflin Street, Suite 202, Madison, Wisconsin 53703, appearing on behalf of Randall Consolidated Joint School District No. 2 and Salem Consolidated Grade School, Joint District No. 2.
- Mr. Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, Inc., 122 West Washington Avenue, Room 500, Madison, Wisconsin 53703, appearing on behalf of Salem Joint School District No. 7, Wheatland Joint No. 1 School District and Wilmot Grade School District.

FINDINGS OF FACT, CONCLUSIONS OF  
 LAW AND DIRECTION OF ELECTIONS

On October 25 and 31, November 1 and 11, December 19 and 26, 1991, School Professional and Employees Association of Kenosha County filed petitions with the Wisconsin Employment Relations Commission to conduct elections in seven

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school districts where each of the bargaining units was later proposed as follows:

All regular full-time and regular part-time professional employes employed by the District, but excluding day-to-day substitutes, supervisory, confidential and managerial employes.

The petitions were consolidated for hearing which was held on April 22, 1992, before Examiner Lionel L. Crowley, a member of the Commission's staff. A stenographic transcript of the proceedings was prepared and received on May 21, 1992. The parties submitted briefs to the Examiner, the last of which was received by July 14, 1992. The Commission having reviewed the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following

#### FINDINGS OF FACT

1. School Professional and Employees Association of Kenosha County, hereinafter referred to as SPEAK, is a labor organization with its offices located at 124 South Dodge Street, Burlington, Wisconsin 53105.

2. Bristol School District No. 1, hereinafter referred to as Bristol, is a municipal employer with its offices located at 20121 83rd Street, Bristol, Wisconsin 53104.

3. Central High School District of Westosha, hereinafter referred to as Westosha, is a municipal employer with its offices located at P.O. Box 38, Salem, Wisconsin 53168.

4. Randall Consolidated Joint No. 1 School District, hereinafter referred to as Randall, is a municipal employer with its offices located at P.O. Box 38, Bassett, Wisconsin 53101.

5. Salem Consolidated Grade School, Joint District No. 2, hereinafter referred to as Salem 2, is a municipal employer with its offices located at P.O. Box 160, Salem, Wisconsin 53168-0160.

6. Salem Joint School District No. 7, hereinafter referred to as Salem 7, is a municipal employer with its offices located at 26325 Wilmot Road, Trevor, Wisconsin 53179.

7. Wheatland Center School District, hereinafter referred to as Wheatland, is a municipal employer with its offices located at 6606 368th Avenue, Burlington, Wisconsin 53105.

8. Wilmot Grade School District, hereinafter referred to as Wilmot, is a municipal employer with its offices located at P.O. Box 68, Wilmot, Wisconsin 53192.

9. On October 25, 1991, SPEAK filed petitions wherein it requested the

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Wisconsin Employment Relations Commission to conduct an election in the Bristol and Salem 2 Districts in collective bargaining units which were ultimately described as "all regular full-time and regular part-time professional employes employed by the District but excluding day-to-day substitutes, supervisory, confidential and managerial employes." Election petitions were filed on October 31, 1991, for Randall, November 1, 1991 for Salem 7, November 11, 1991 for Wheatland, December 19, 1991 for Westosha and December 26, 1991 for Wilmot. In each of the Districts, the labor organizations that previously represented the existing bargaining units indicated that they did not wish to appear on the ballot in any representation election.

10. The Districts of Westosha, Randall, Salem 2 and Wilmot, contrary to SPEAK, contend that the respective petitions are not timely filed.

The SPEAK election petition as to Westosha was filed December 19, 1991. The 1990-1992 collective bargaining agreement between Westosha and the Salem Central Education Association had a stated term of July 1, 1990 to June 30, 1992 and did not contain a specific date for providing notice of intent to commence bargaining over a successor agreement.

When the SPEAK election petition regarding Randall was filed on October 31, 1991, the most recent collective bargaining agreement between the Randall Teachers' Association and Randall expired June 30, 1991.

The SPEAK election petition regarding Salem 2 was filed on October 25, 1991. The most recent collective bargaining agreement between the Salem Consolidated Education Association and Salem expired June 30, 1991.

The SPEAK election petition regarding Wilmot was filed on December 19, 1991. That same day, an interest arbitrator issued an award which established the terms of the parties' 1990-1992 contract which had a stated term of July 1, 1990 through June 30, 1992 and did not contain a specific date for providing notice of intent to commence bargaining over a successor agreement.

11. SPEAK contends, contrary to the seven Districts, that the existing bargaining units should be expanded to include substitutes working 21 or more consecutive days in any school year. The seven Districts generally contend that such substitutes are temporary employes and should not be included in the existing units because there is not a community of interest between regular and temporary employes.

12. Generally, long-term substitutes working 21 or more consecutive days are not under contract and the terms of the respective collective bargaining agreements do not apply to them. Although these long-term substitutes perform many of the same functions as the regular teachers, their hours differ and they are not required to attend faculty meetings or perform curriculum work. The long-term substitutes go through a different hiring procedure than regular teachers, are not formally evaluated, and are usually paid at a daily rate and receive no fringe benefits. In general, these employes have replaced regular teachers who have gone on maternity or other leave and their employment ended when the regular teacher returned.

13. At Westosha, the District has hired one long-term substitute in the

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last three years and that was Gary Schneider who substituted for Ms. Bernadette Elverman who was on sick leave. Schneider was paid \$90.00 per day with no benefits and worked from September 10, 1991 through October 23, 1991 and two hours per day from October 28, 1991 until November 8, 1991 when Ms. Elverman returned full-time to her position.

14. At Bristol, in the past three years, five long-term substitutes were hired. Substitutes are paid at 80% of 1/190 of the BA, zero experience step per day beginning on the 21st day. Barb Gentz was hired in 1991-92 to replace a music teacher who broke her contract and Gentz worked 29 days until a new music teacher was hired. Gentz was not certified in music. Gentz was also hired in the 1990-91 school year for 46.5 days to substitute for the kindergarten teacher. In 1990-91, Diane Zube was hired as a long-term substitute for 58-1/2 days teaching first grade. Also in 1990-91, Terri Rachwal substituted for 31 consecutive days and may not have been certified for the position as a classroom teacher. In 1989-90, Karen Weis worked as a long-term substitute for 25 consecutive days, possibly for first grade. Gentz, Zube, Rachwal and Weis ceased employment with the District when the District hired a new music teacher or when the regular teacher returned from leave.

The District hired one other substitute, Kurt Harff, who was offered a half-time position but Harff initially was unsure if he would accept it and substituted until he ultimately decided to accept the position on a regular basis.

15. At Randall, in the 1991-92 school year, Robyn Carley was a long-term substitute from August 23 to November 21, 1991 for Laurel Tenhagen, who was on maternity leave and Joy Asta substituted for Becky Sponholz who was also on maternity leave from September 10, through December 20, 1991. Joy Asta also substituted for Carol Loveland who was on leave as a result of an auto accident from January 6 through March 6, 1992. Long-term substitutes are paid \$65.00 per day for the first 20 days and then receive the daily rate as if they were placed on the regular teacher salary schedule. There were no substitutes hired to work 21 or more days in the 1990-91 school year at Randall.

16. At Salem 2, three long-term substitutes were hired in the 1987-88 school year. Sue Rawlins worked for 25 days and Elizabeth Schultz substituted twice for 23 days and 26 days, respectively. No long-term substitutes were hired in 1988-89 or 1989-90 or 1990-91. In 1991-92, Kimberly Phillips substituted for Andrea Bland for 28 days and Paula Stenson substituted for Elizabeth Schultz who went on a medical leave for 21 days. The rate of pay for long-term substitutes in 1987-88 was \$75/day and in 1991-92, it was \$85/day.

17. At Salem 7, Maureen Granger was hired for 91 days in the first semester of the 1990-91 school year to replace a teacher who was on maternity leave. She was paid \$60/day for the first 20 days and \$80/day thereafter. In 1990-91, the District hired Beth Johnson for the full school year for an intern position as no interns from UW Parkside were available. Johnson was given a contract, paid at the BA zero experience rate and was given certain fringe benefits. Joanne Oettiker was hired the second semester for 1991-92 to fill an intern position. She too was given a contract, paid on the salary schedule and given certain fringe benefits.

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18. At Wilmot, there were no substitutes hired who worked 21 or more consecutive days in the last three years. Although Jack Matt replaced Agnes Strassheim in the 1991-92 school year, there apparently was a break in his service and he did not work 21 or more consecutive days. Long-term substitutes who work for more than 10 consecutive days are paid \$25/day more than day-to-day substitutes.

19. At Wheatland, no long-term substitutes were hired for the 1991-92 school year. In 1990-91 Bonnie Beckum was employed as a substitute half-time for 65 consecutive days and Judy Brandenburg was employed half-time for 57 consecutive days. Each were paid \$31/day for the first 14 days and the \$47.82/day thereafter. In 1989-90, Mary Ryczek was hired as a long-term substitute for 50 consecutive days and was paid \$62/day for the first 14 days and \$92.90/day thereafter.

20. The long-term substitutes in Findings of Fact 13 through 19 had no reasonable expectation of continued employment once the need for their services ended. Thus they were temporary employees.

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

#### CONCLUSIONS OF LAW

1. The SPEAK petitions regarding Westosha, Randall, Salem 2 and Wilmot are timely filed.

2. A bargaining unit including substitute teachers working 21 or more consecutive days with regular full-time and regular part-time professional employees is not an appropriate unit within the meaning of Sec. 111.70(4)(d)2.a. Stats.

3. A bargaining unit of all regular full-time and regular part-time professional employees employed by the District but excluding supervisory, confidential and managerial employees, is an appropriate unit within the meaning of Sec. 111.70(4)(d)2.a., Stats., and a question of representation presently exists in such a bargaining unit in each of the seven Districts set forth in Findings of Fact 2 through 8.

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

#### DIRECTION OF ELECTIONS

1. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional employees of the Bristol School District No. 1 excluding supervisory, confidential and managerial employees who were employed on October 16, 1992, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of

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determining whether a majority of such employes voting desire to be represented by the School Professional and Employees Association of Kenosha County for the purpose of collective bargaining with the Bristol School District No. 1 on questions of wages, hours and conditions of employment or not be so represented.

2. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional employes of the Central High School District of Westosha excluding supervisory, confidential and managerial employes who were employed on October 16, 1992, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by the School Professional and Employees Association of Kenosha County for the purpose of collective bargaining with the Central High School District of Westosha on questions of wages, hours and conditions of employment or not be so represented.

3. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional employes of the Randall Consolidated Joint No. 1 School District excluding supervisory, confidential and managerial employes who were employed on October 16, 1992, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by the School Professional and Employees Association of Kenosha County for the purpose of collective bargaining with the Randall Consolidated Joint No. 1 School District on questions of wages, hours and conditions of employment or not be so represented.

4. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional employes of the Salem Consolidated Grade School, Joint District No. 2 excluding supervisory, confidential and managerial employes who were employed on October 16, 1992, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by the School Professional and Employees Association of Kenosha County for the purpose of collective bargaining with the Salem Consolidated Joint School District No. 2 on questions of wages, hours and conditions of employment or not be so represented.

5. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional employes of the Salem Joint School District No. 7 excluding supervisory, confidential and managerial employes who were employed on October 16, 1992, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented

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by the School Professional and Employees Association of Kenosha County for the purpose of collective bargaining with the Salem Joint School District No. 7 on questions of wages, hours and conditions of employment or not be so represented.

6. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional employes of the Wheatland Center School District excluding supervisory, confidential and managerial employes who were employed on October 16, 1992, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by the School Professional and Employees Association of Kenosha County for the purpose of collective bargaining with the Wheatland Center School District on questions of wages, hours and conditions of employment or not be so represented.

7. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional employes of the Wilmot Grade School District excluding supervisory, confidential and managerial employes who were employed on October 16, 1992, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by the School Professional and Employees Association of Kenosha County for the purpose of collective bargaining with the Wilmot Grade School District on questions of wages, hours and conditions of employment or not be so represented.

Given under our hands and seal at the City of  
Madison, Wisconsin this 16th day of October,  
1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

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

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BRISTOL SCHOOL DISTRICT NO. 1  
CENTRAL HIGH SCHOOL DISTRICT  
OF WESTOSHA  
RANDALL CONSOLIDATED JT. NO. 1  
SCHOOL DISTRICT  
SALEM CONSOLIDATED GRADE SCHOOL,  
JOINT DISTRICT NO. 2  
SALEM JOINT SCHOOL DISTRICT NO. 7  
WHEATLAND CENTER SCHOOL DISTRICT  
WILMOT GRADE SCHOOL DISTRICT

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

There are essentially two issues in dispute between SPEAK and the various Districts. The first is whether the petitions involving four of the Districts were timely filed. The second is whether substitute teachers who work 21 or more consecutive days are appropriately included in the unit at each District with regular full-time and regular part-time professional employees.

SPEAK'S POSITION

SPEAK contends that the petitions filed herein as to Westosha, Randall, Salem 2 and Wilmot should not be dismissed as untimely filed. It submits the Commission has considered petitions filed before the window period to be timely instead of further delaying the proceedings by simply requiring petitioner to file again. It asserts that the application of the contract bar rule would serve no purpose where the labor organization signatory to the contract is defunct or has indicated a desire to not represent the employees in question beyond the term of the current agreement. It submits that none of the incumbent unions have opted to appear on the ballot, and the Commission should find the petitions timely filed.

SPEAK contends that a long-term substitute who is not under permanent contract but works 21 or more consecutive days in any given school year should be included in the bargaining units. SPEAK points out that long-term substitute teachers have been recognized by the Commission to be municipal employees. It notes that day to day substitutes are municipal employees which have been included in a proposed substitute bargaining unit although those who worked fewer than 10 days in a school year were precluded from voting in the election. SPEAK asserts that a substitute bargaining unit in each of the Districts would be too small to be a viable.

SPEAK insists that the professional unit is an appropriate unit for the long-term substitutes. It claims that when applied to the long-term substitutes, the criteria developed by the Commission for determining the appropriateness of a unit supports the inclusion in the professional staff unit instead of in a fragmented bargaining unit consisting of a handful of substitute teachers.

SPEAK argues that the long-term substitutes share a community of interest

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with regularly employed unit members and that while there is a lack of job security, the advantages of being represented by SPEAK are substantial such that there is no conflict with regular teaching staff.

With respect to duties and skills, SPEAK contends that the evidence establishes that the duties of the long-term substitutes and the regular contracted teachers are essentially the same. SPEAK also points out that the skills and education of long-term substitutes and regular teachers are similar or identical, as required by regulations of the Department of Public Instruction. As to the similarity of wages, hours and working conditions, SPEAK points out that long-term substitutes are paid more than day to day substitutes and closer to regular contracted teachers and that after a set, consecutive number of work days, they are paid at an augmented rate. SPEAK notes that in Salem 7, long-term substitutes received tuition reimbursement for college courses and some long-term substitutes receive some fringe benefits such as sick leave and insurance.

SPEAK states that the hours the long-term substitute is expected to work in any of the Districts during the instructional day are similar to regular contracted teachers and that they get preparation time. It maintains that any difference in hours between regular teachers and long-term substitutes is not significant. SPEAK claims that working conditions are substantially similar to those of regular contracted teachers. SPEAK also points out that there is common supervision and a common work place.

SPEAK argues that the possibility of undue fragmentation exists given the small number of long-term substitutes at the seven Districts. SPEAK notes that "bargaining history" is not applicable to the instant case.

In summary, SPEAK takes the position that due to the substantial similarities to regular contracted teachers in duties and working conditions, the long-term substitutes must be included in the proposed unit. It asserts that these employees are municipal employees and, under the particular circumstances of this case, should be included in the existing bargaining units. Citing Commission decisions involving CETA employees, it submits that the Commission has consistently found that limited duration of employment is not itself enough to pre-clude temporary employees from membership in an appropriate unit.

It maintains that temporary employment has been considered for voting eligibility but is not controlling for purposes of determining inclusion or exclusion from the unit. In conclusion, SPEAK submits that the long-term substitutes deserve to have their interests considered and protected in the bargaining process and it requests the Commission include the long-term substitute positions in the proposed bargaining units.

#### DISTRICTS' POSITIONS

Westosha and Wilmot argue that the contract bar rule requires the dismissal of the election petitions. They argue that the contracts do not expire until June 30, 1992, and SPEAK filed its petitions more than six months prior to their expiration. They refer to Commission decisions requiring petitions to be filed within the 60 day period prior to the date provided for reopening which they assert is not until May, 1992. The Districts state that

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it is obvious that the petitions are untimely and ask that they be dismissed.

Randall and Salem 2 Districts also assert that the petitions are untimely and must be dismissed. The Randall contract expired on the day prior to the first contract day of the 1991-92 school year and Salem 2 expired on June 30, 1991. The Districts point out that a timely petition can be filed in the 60 day period prior to expiration of the contracts but none was filed until well after the contracts expired. They submit that it makes no sense for the Commission to rule that a petition is timely filed after the expiration of the collective bargaining agreement especially where the existing Union and District are bargaining in good faith to reach a voluntary agreement. It argues that finding such petitions timely would undermine the Commission's long established "modified Wauwatosa rule." The Districts assert that the Commission must enforce its rules regarding the timeliness of filing petitions and dismiss the petitions.

The Districts contend that the long-term substitutes are not regular full-time or regular part-time employees but are temporary employees. They submit that the Commission has consistently held that employees who lack a reasonable expectation of continued employment are temporary employees. The Districts assert that the long-term substitutes are used to fill in for regular teachers who are absent due to illness, maternity leaves, unforeseen emergencies, etc., and thus they lack a reasonable expectation of continued employment. The Districts state that the determinative factor in deciding whether an employee is a regular or casual employee is the regularity of employment rather than the number of hours worked. They point out that the long-term substitutes work sporadically and few have been employed in the past three years, none at Wilmot in that time frame and only one at Westosha. Given this record, the Districts insist that long-term substitutes are not regular employees.

The Districts claim that the Commission has consistently taken the position that there is no community of interest between regular and temporary employees and there is no basis for including long-term substitutes in the unit with regular full-time and regular part-time employees.

The Districts maintain that the appropriateness of collective bargaining units has been determined by the Commission on a case by case basis considering the seven factors set forth in SPEAK's arguments. As far as community of interest factor is concerned, the Districts submit that temporary employees share no community of interest with regular employees because of their irregular or temporary employment. They point out that in only one case, Madison Metropolitan School District, Dec. No. 14161-A (WERC, 1/77), has the Commission found that teachers with "temporary contracts" had a community of interest with regular full-time and regular part-time teachers and argue that the factual situations at the instant Districts are totally different than those present in Madison.

With respect to duties and skills, the Districts allege that there are some significant differences in duties of long-term substitutes and regular teachers in that the long-term substitutes are not required to attend faculty meetings, work outside the working day, act as extra-curricular supervisors, develop curriculum or to continue their education. The Districts admit that

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the skills required are similar.

The Districts point out there are differences in wages, hours and working conditions. The long-term substitutes are paid less, usually on a daily basis, fringe benefits are substantially different, they work only the time that pupils are present which is less than regular teachers, they do not go through an interview process, are not required to submit resumes, are not formally evaluated, may turn down work and are usually not under contract.

It is conceded by the Districts that supervision and work place are common for long-term substitutes and regular employes.

As to undue fragmentation, the Districts concede that excluding these employes from the unit of regular full-time and regular part-time employes will result in fragmentation but argue that a balance must be struck to insure that the unique interests and aspirations of a separate unit are not subordinated to that of another group. On balance, the Districts assert long-term substitutes do not share a community of interest due to their irregular employment, the differences in wages, hours and conditions of employment such that the long-term substitutes on balance are not appropriately included in the unit. The Districts submit that long-term substitutes are more appropriately included in a unit of their own with day to day substitutes. With respect to bargaining history, the Districts note that the collective bargaining agreements are not applicable to the long-term substitutes.

In conclusion, the Districts maintain that application of the Commission's seven factor appropriate unit analysis leads to the conclusion that the long-term substitutes are not appropriately included in the unit of regular full-time and regular part-time teachers.

The Districts have also argued that SPEAK has not advanced any argument for a change in the bargaining unit description from the current description and in the absence of reasonable basis for a change, the unit description should remain as is or be drafted more clearly. The Districts sum up their arguments by asserting that the long-term substitutes have no reasonable expectation of continued employment and thus are temporary or casual employes and that it is inappropriate to include them in the same bargaining unit as regular full-time and regular part-time teachers.

#### DISCUSSION

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Randall and Salem 2 have argued that the SPEAK petitions are untimely because they were filed after the expiration of the applicable bargaining agreement while there were ongoing efforts by the Districts and incumbent Unions to reach agreement on a new contract. Contrary to the position of these Districts, the Wauwatosa timeliness doctrine has no applicability here. Wauwatosa establishes a time period during a contract when election petitions can be filed. Here, the contracts have expired. We have long held that an election petition is timely where the applicable contract has expired. 1/ This rule is premised upon our view that the interest in encouraging stability in existing collective bargaining relationships should not insulate the incumbent union from replacement or ouster once negotiations for a successor agreement extend beyond the expiration date of the existing agreement. 2/ At that point in time, the right of employees to change or eliminate an existing representative predominates over stability.

Given the foregoing, we conclude the SPEAK petitions as to Randall and Salem 2 are timely.

Westosha and Wilmot argue the SPEAK petitions are untimely because they were filed well before the 60 day period prior to the expiration of existing contracts. Contrary to the apparent assumption of both Districts, where, as here, the existing agreement has no stated reopener date, we have not held that petitions are timely only if filed during the 60 day period prior to the expiration of the agreement. Instead, it is our policy in such circumstances to consider available evidence as to a variety of factors including the status of any bargaining, the date the parties have historically reopened bargaining and applicable budgetary deadlines when assessing the timeliness of a petition. 3/ Here, the applicable record evidence is limited to the fact that bargaining for a successor agreement had not commenced in either Westosha or Wilmot when the petitions were filed. Under these circumstances, we conclude that although the petitions were filed well in advance of contract expiration, the statutory right of employees to seek change in their bargaining representative predominates over the interest in stability. Thus, we find the petitions timely filed.

As to the propriety of including substitutes working more than 21

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1/ Marinette County, Dec. No. 22102 (WERC, 4/84); City of Janesville, Dec. No. 20753 (WERC, 6/83); Dunn County, Dec. No. 17861 (WERC, 6/80); City of Green Bay, Dec. No. 16399 (WERC, 6/78); Kenosha VTAE District, Dec. No. 14993 (WERC, 10/76); City of Appleton, Dec. No. 7423 (WERC, 1/66). Though not applicable herein, the interest arbitration exception to this general rule was most recently set forth in Mukwonago School District, Dec. No. 24600 (WERC, 6/87).

2/ Dunn County, supra; City of Green Bay, supra; La Crosse County, Dec. No. 12931 (WERC, 8/74).

3/ Village of Shorewood, Dec. No. 14262 (WERC, 1/76); Village of Grafton, Dec. No. 12718 (WERC, 5/74); City of Green Bay, Dec. No. 6558 (WERC, 11/63).

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consecutive days in the same unit as regular full-time and regular part-time employees, we do not find such a unit appropriate.

SPEAK correctly concedes that the limited duration of the substitutes' work means the substitutes lack a reasonable expectation of continued employment. As such they are temporary employees. We have generally concluded that it is inappropriate to include temporary employees in the same unit as regular full-time and regular part-time. 4/

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4/ Arrowhead United Teachers v. WERC, 116 Wis.2d 580 (1984); Jefferson County, Dec. No. 26462-A (WERC, 3/91); Muscoda Solid Waste Commission, Dec. No. 26664 (WERC, 10/90); cf. School District of Pittsville, Dec. No. 21806 (WERC, 6/84).

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This is so because when applying the first criterion of our appropriate unit analysis 5/ we have determined that temporary employment status inherently produces interests and aspirations at odds with those of regular employees. This distinction generally overrides similarities in wages, hours, working conditions, duties and skills, workplace or supervision which may be present.

We find that distinction to be of overriding importance here. Thus, although SPEAK correctly argues that there are similarities between the duties and skills, workplace, supervision and working conditions of the substitutes in question and regular teachers, these similarities are not sufficiently compelling to warrant inclusion in the unit.

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5/ When determining whether a unit is appropriate we consider:

1. Whether the employees in the unit sought share a 'community of interest' distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

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. 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.

Within the unique factual context of each case, not all criteria deserve the same weight and thus a single criterion or combination of criteria may be determinative. Taylor County, Dec. No. 27360 (WERC, 8/92).

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SPEAK cites CETA cases as demonstrating that employes with a limited duration of employment have been included in units of regular employes. We disagree. The CETA positions in question generally became regular positions funded by the municipal employer upon expiration of CETA funding. Thus, although CETA funding was temporary, the positions and employes were regular and appropriately included in the unit of regular employes. Here, there is not an ongoing need for "regular" long-term substitutes in any of the Districts. Thus, unlike the CETA cases, both the position and the employes are temporary. 6/

SPEAK correctly asserts that substitute teachers are municipal employes entitled to seek union representation in an appropriate unit. Citing the small numbers of long-term substitutes, SPEAK asserts a unit of long-term substitutes in each District would not be viable and argues that inclusion in the regular employe unit should thus be allowed. However, in our view, the appropriate unit for these employes is a unit of all substitute teachers. The commonality of interest in a unit of temporary employes and the need to avoid undue fragmentation combine to render such a unit appropriate and presumably large enough to meet SPEAK's concerns about size.

Given the foregoing, we have directed elections in the existing units.

Dated at Madison, Wisconsin this 16th day of October, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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6/ Where, as in Madison School District, Dec. No. 14161-A (WERC, 1/77) the need to replace regular teachers for long periods of time is regular and some substitute teachers served as long-term substitutes on a recurrent basis, inclusion in the regular unit can be appropriate. In such circumstances, substitutes in effect became regular employes. Further, where the work of the temporary employes is closely related to or the same as that of regular employes and the need for the temporary employe is regular, we have found on occasion it appropriate to include the temporary employes in the unit although they were ineligible to vote in an election. Winnebago County, Dec. No. 10304-A (WERC, 9/79); City of Appleton, Dec. No. 16090-A (WERC, 9/78). Here, because the need is not regular, inclusion of the employe is not appropriate under this line of cases either.

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

Herman Torosian /s/  
Herman Torosian, Commissioner

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

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