

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:

In the Matter of the Petition of :

:

UNITED FOOD AND COMMERCIAL :

WORKERS INTERNATIONAL UNION, LOCAL 73-A : Case 11

: No. 47169 ME-3211

Involving Certain Employes of : Decision No. 27502

:

COLBY SCHOOL DISTRICT :

:

Appearances:

Ms. Mary Virginia Quarles, Executive Director, Central Wisconsin UniServ Council-West, Wisconsin Education Association Council (WEAC), 2805 Emery Drive, P.O. Box 1606, Wausau, WI 54402-1606, appearing on behalf of WEAC.
Ms. Christel Jorgensen, Business Agent, General Teamsters Union, Local 662, 119 West Madison Street, P.O. Box 86, Eau Claire, WI 54702-0086, appearing on behalf of the Teamsters.
Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Roger E. Walsh, Suite 1400, 111 East Kilbourn Avenue, Milwaukee, WI 53202-3101, appearing on behalf of Colby School District.

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

United Food and Commercial Workers International Union (UFCW), Local 73-A, filed a petition for election with the Wisconsin Employment Relations Commission (Commission) on March 11, 1992. Said petition requested the Commission to conduct an election among certain employes of the Colby School District. The petition described the claimed appropriate bargaining unit as consisting of all full-time and part-time custodians and teacher assistants, excluding all cooks, secretaries, library, voluntary, office clerical, receptionist and supervisors as defined by the Commission. On March 12, 1992, Central Wisconsin UniServ Council-West, Wisconsin Education Association Council, filed a petition for election with the Commission, also requesting an election among certain employes of the District. The petition described the claimed appropriate bargaining unit as all regular full-time and part-time aides and custodians of the District, excluding confidential, supervisory, managerial and professional employes. Said petition was processed as a motion to intervene in the matter of the petition of UFCW. The parties began efforts to resolve the issues in dispute. On or before May 20, 1992, the District advised the Commission that the bargaining unit it claimed appropriate was described as all regular full-time and regular part-time non-professional employes of the District, excluding confidential, supervisory, managerial and professional employes. On or before June 19, 1992, General Teamsters Union, Local 662, advised the Commission that it desired to intervene in the matter of the petition of UFCW. The parties continued their efforts to resolve all the issues in dispute. Said efforts were ultimately unsuccessful. A notice of hearing was sent on August 10, 1992, scheduling hearing in this matter for September 3, 1992. In a letter received August 25, 1992, UFCW advised the Commission that it was withdrawing its petition in this matter. A hearing was conducted on September 3, 1992, at Colby, Wisconsin, before James W. Engmann, a member of the Commission's staff. The parties filed briefs in this matter, the last of which was received October 13, 1992, and they waived the filing of

reply briefs. The transcript of the hearing was received by the Commission on October 26, 1992. The Commission, having considered the evidence and the arguments of the parties, hereby makes and issues the following

FINDINGS OF FACT

1. The United Food and Commercial Workers International Union, Local 73-A (hereinafter UFCW), is a labor organization with offices located at 8579 County "C", Sturgeon Bay, Wisconsin 54235.

2. The Central Wisconsin UniServ Council-West, Wisconsin Education Association Council (hereinafter WEAC), is a labor organization with offices located at 2805 Emery Drive, P.O. Box 1606, Wausau, Wisconsin 54402-1606.

3. General Teamsters Union, Local 662 (hereinafter Teamsters), is a labor organization with offices located at 119 West Madison Street, P.O. Box 86, Eau Claire, Wisconsin 54702-0086

4. Colby School District (hereinafter District), is a municipal employer with offices located at 507 West Spence Street, P.O. Box 139, Colby, Wisconsin 54421-0139. The District operates three elementary schools for Kindergarten through Grade 6. These elementary schools at Colby, Dorchester and Unity feed into the Grade 7 through 12 Junior-Senior High School

5. On March 11, 1992, the UFCW filed a petition for election with the Wisconsin Employment Relations Commission (hereinafter Commission), requesting the Commission to conduct an election among certain employees of the District. The bargaining unit claimed as appropriate was described as follows:

Including: All full-time and part-time custodian (sic) and teacher assistants. Excluding: All cooks, secretaries, library, voluntary, office clerical, receptionist and supervisors as defined by the WERC.

6. On March 12, 1992, WEAC filed a petition for election with the Commission, also requesting the Commission to conduct an election among certain employees of the District. Said petition was processed as a motion to intervene in the matter of the petition of the UFCW. The bargaining unit claimed as appropriate was described as follows:

All regular full-time and part-time aides and custodians of the Colby School District, excluding confidential, supervisory, managerial and professional employees.

7. The parties attempted to resolve the issues in dispute. On or before May 20, 1992, the District advised the Commission that the bargaining unit it claimed as appropriate was described as follows:

All regular full-time and regular part-time non-professional employees of the Colby School District, excluding confidential, supervisory, managerial and professional employees.

The parties continued their efforts to resolve issues in dispute.

8. On June 19, 1992, the Teamsters advised the Commission that it wished to intervene in the matter of the petition of UFCW. The parties continued their efforts to resolve all the issues in dispute. Said efforts

were ultimately unsuccessful.

9. A notice of hearing was sent on August 10, 1992, scheduling hearing in this matter for September 3, 1992. In a letter received August 25, 1992, UFCW advised the Commission that it was withdrawing its petition in this matter.

10. A hearing was conducted on September 3, 1992, at Colby, Wisconsin, before James W. Engmann, a member of the Commission's staff. At hearing both WEAC and the Teamsters formally moved to intervene in the matter of the petition of the UFCW. No objection to said motions was received, and said motions to intervene were granted. UFCW's request to withdraw its petition was placed into the record. No objection to said request was received, and said request was granted.

11. The bargaining unit claimed as appropriate by the District and now claimed appropriate by WEAC is described as follows:

All regular full-time and regular part-time non-professional employes of the Colby School District, excluding confidential, supervisory, managerial and professional employes.

Teamsters claim that four bargaining units are appropriate as follows: Food Service, Clerical, Teacher Aides, and Custodial.

12. The parties stipulated that Cheryl Geissler, administrative assistant-payroll, and Christine Thieme, administrative assistant-accounting, are excluded from the bargaining unit as confidential employes. The parties also stipulated that Laurie Hesgard, food service director, and Dennis Wenzel, head custodian, are excluded from the bargaining unit as supervisory employes. WEAC and the District assert that Robert Blume, assistant head custodian, should be excluded from the bargaining unit as a supervisory employe. Teamsters assert that he should be included in the bargaining unit as a municipal employe.

13. The parties stipulated that the number of support staff eligible for inclusion in the bargaining unit or units is 56, including the assistant head custodian which position is in dispute. In terms of the four groups, the numbers of employes are as follows:

| | |
|----------------------|----|
| Custodians | 10 |
| Food Service Workers | 17 |
| Secretaries | 9 |
| Teacher Aides | 20 |

14. The employes in the job classification of custodian, food service worker, secretary and teacher aide have similar wages, hours and working conditions with each other. Food service workers work 190 days a year. Full-time cooks work seven or 7.25 hours per day while part-time cooks, servers and lunch room supervisors work between 1.5 and 4 hours per day. Teacher aides work a 190 day year. Most teacher aides work an 8 hour day, although five of the 20 teacher aides work 6 or 7 hour days. Secretaries work either a 200 day, 220 day or 260 day (12 month) year and either an 8 or 8.5 hour day. Custodians work a 260 day (12 month) year and 8 hours per day.

15. Each job classification has a wage range as follows:

| | |
|---------------------------------------|-----------------|
| Food service - part time (190 days): | \$4.25 - \$6.35 |
| Teacher aides (190 days): | \$4.40 - \$7.85 |
| Food service - cooks (190 days): | \$4.40 - \$7.35 |
| Food service - head cooks (190 days): | \$5.00 - \$8.50 |
| Secretary (200 days): | \$4.40 - \$8.35 |
| (220 days): | \$4.40 - \$8.75 |
| (12 month): | \$5.50 - \$9.60 |
| Custodians (12 month): | \$5.57 - \$8.85 |

Step increases are at one year steps with the maximum reached after 12 years. All employes who work over 1000 hours per year have 4% contributed to a retirement plan.

16. The employes in the four job classifications receive insurance contributions from the District. The differences in insurance contributions are not based upon job classification but upon the amount of time worked during the year. All employes who work 12 months per year (custodians and secretaries) have \$403 per month contributed for health insurance. Employes who work 190, 200 or 220 days per year have a pro rata amount of health insurance contributed, with 260 days equal to \$403 per month. Thus, 190 day employes (food service workers and teacher aides) have 73.07% or \$294.94 contributed; 200 and 220 day employes (secretaries) have 76.92% and 84.6%, respectively, contributed which equals \$310.48 and \$341.52 per month, respectively. All employes who work at least 17.5 hours per week (all employes except some part-time cooks and lunchroom supervisors) receive disability insurance paid by the District and can establish a Section 125 account for health costs.

17. The employes in the four job classifications receive sick leave, paid holidays, emergency leave, and personal leave from the District, and some receive paid vacation. The differences in leave are not based upon job classification but upon the amount of time worked during the year. All employes who work 190, 200 or 220 days per year (food service workers, secretaries and teacher aides) receive eight sick days per year while all employes who work 12 months per year (custodians and secretaries) receive 10 sick days per year. All of the employes in the four job classification have unlimited sick leave accumulation which, upon termination, is compensated at \$10 per day. All 190 day employes (food service workers and teacher aides)

receive 6.5 paid holidays; all 200 and 220 day employes (secretaries) receive seven and 7.5 days, respectively; and all 12 month employes (custodians and secretaries) receive 9 paid holidays. All of the employes receive three emergency leave days, two personal days, and one floating holiday which can be used only for cancellation of school due to inclement weather. No employes of any job classification who work less than a 12 month year receives paid vacation; all employes who work a 12 month year (custodians and secretaries) receive paid vacation, the amount of which is not based upon job classification but upon years of service.

18. Custodians and food service workers have dual supervision in that they report both to the head custodian and food service director, respectively, as well as to the school principal. This is especially true of those custodians and food service workers in schools other than the Junior-Senior High School where the head custodian and food service director work. While teachers supervise the work of the teacher aides, the principals of each school supervise the teacher aides as employes. Secretaries report to the school principal. As custodians, food service workers, secretaries and teacher aides are supervised at some level by the school principal, the employes in these job classifications share common supervision to that extent.

19. The non-professional employes of the District work in five locations. Two secretaries work at the Administrative Office. Each school has one or more employes in each job classification as follows:

Junior-Senior High School: 2 secretaries, 5 teacher aides, 6 custodians (incl
Colby Elementary School: 3 secretaries, 9 teacher aides, 2 custodians and 2 fo
Unity: 1 secretary, 2 teacher aides, 1 custodian and 2 food
service workers.
Dorchester: 1 secretary, 4 teacher aides, 1 custodian and 3
food service workers.

As employes in each of the job classifications of custodian, food service worker, secretary and teacher aide work in each of the District's four schools, they share a common workplace with each other.

20. Since at least 1989, the employes in this matter have met as a group and selected representatives from the four job classifications, that these representatives received recommendations and ideas for negotiating with the District from members of the four job classifications, and that this support staff committee has met with the District's negotiating committee for the purpose of discussing wages and benefits. The District committee would also meet with the entire support staff. When everything was agreed upon, a document was prepared which listed the wages and benefits. Each support staff employe was given an individual contract with the employe's wage rate and specific benefits listed.

21. Dennis Wenzel has been the head custodian since June 1990. Robert Blume has been the assistant head custodian since September 1990. Since June 1990, the District has hired three custodial employes. When the head custodian interviewed candidates for these positions, he called in all the custodians, including the assistant head custodian, and then discussed the candidates with all the custodians asking for their advice and what they thought of the candidate. On one occasion, the head custodian asked the assistant head custodian what he thought of a particular candidate. The assistant head custodian said the candidate might do a fair job. That candidate was not hired. The assistant head custodian does not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes.

22. Because the head custodian lives 20 miles southeast of Colby and the

assistant head custodian lives in the Colby area, the assistant head custodian is the first to be called in an emergency, although that has never happened. When the head custodian leaves on vacation, he makes a list of duties for the custodians to do while he is gone. If they have questions or need help, he directs them to contact the assistant head custodian. If the head custodian is gone, the assistant head custodian can bring in additional employees and change their duties and locations, although there has been no need to do this. The assistant head custodian has very limited authority to direct and assign the work force.

23. Both the head and assistant head custodians are located at the Junior-Senior High School, as are five other custodians. Two custodians are located at Colby Elementary School, and one custodian is located at Unity Elementary School and at Dorchester Elementary School. While the four custodians at the elementary schools are supervised by the head custodian, they are also supervised by the principal of the school at which they are located. The five custodians at the high school are also supervised by the high school principal. The head custodian is paid \$10 per hour. The assistant head custodian is paid \$7.85 per hour, even when the head custodian is gone. The wage schedule for custodians ranges from \$5.57 to \$8.85 per hour. The assistant head custodian is paid for his labor, not for his supervision of employees. All the custodians have a routine and know what is expected of them. The head custodian spends 90% of his time on actual physical labor and 10% of his time on paper work and supervisory activities. The assistant head custodian usually spends 100% of his time in physical labor.

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

CONCLUSIONS OF LAW

1. Bargaining units for each of the job classifications in this matter, custodians, food service workers, secretaries and teacher aides, are not appropriate bargaining units as they violate the anti-fragmentation proscription of Sec. 111.70(4)(d)2.a., Stats.

2. A bargaining unit composed of all regular full-time and regular part-time non-professional employees of the Colby School District, excluding confidential, supervisory, managerial and professional employees, is an appropriate bargaining unit under Sec. 111.70(4)(d)2.a., Stats.

3. A question concerning representation exists within the collective bargaining unit referred to in Conclusion of Law 2, above.

4. Robert Blume, assistant head custodian, is not a supervisory employee as defined in Sec. 111.70(1)(o), Stats., but is a municipal employee within the meaning of Sec. 111.70(1)(1), Stats., and is, therefore, included in the bargaining unit referred to in Conclusion of Law 2 above.

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

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five days from the date of this direction in a collective bargaining unit consisting of all regular full-time and regular part-time non-professional employees of the Colby School District, excluding confidential, supervisory, managerial and professional

employees, who were employed on December 15, 1992, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of the employees voting desire to be represented by the Central Wisconsin UniServ Council-West, Wisconsin Education Association Council (WEAC), or by General Teamsters Union, Local 662, for the purpose of collective bargaining with the Colby School district on questions of wages, hours and conditions of employment, or not to be so represented.

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

COLBY SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

WEAC

WEAC argues that the bargaining history of these employees indicates that they have historically operated as a wall to wall unit for the purpose of establishing wages, benefits and working conditions; that separation in to different bargaining units would cause undue fragmentation of the workforce and put an unreasonable burden upon the District; that the bargaining history is that of a single bargaining team composed of representatives selected by each group of employees; that this bargaining produced a composite document which is issued to each employe and governs the benefits for support personnel; that to require the District to bargain with multiple small bargaining units instead of the historic single unit would reduce the collective strength of the employees, thereby putting them at a disadvantage; that these employees share a similar workplace, hours and working conditions; that the preponderance of work hours fall within the school day; that there is similarity with respect to leaves, holidays, insurance, retirement and disability coverage; that the same contract form is utilized for all these employees; that these employees share common supervision; and that the superintendent and building principal are the ones empowered to grant leaves, discipline employees and effectively recommend hiring and firing.

Teamsters

The Teamsters argue that while the Commission is to avoid fragmentation of bargaining units whenever possible, the statute does not preclude the Commission from considering bargaining units of more limited composition; that as the custodians and the teacher aides are the only two groups which wish to organize, to sustain the position of WEAC and the District would deprive these employes of their protected right to organize into a labor union;; that it would deny the various employe groups the opportunity to be represented to the best of their interest; that to create a wall to wall unit would create a bargaining unit made up of employes that do not have a community of interest; that aides do not have a community of interest with the cooks and custodians as their duties and skills are totally different; that aides do not have a community of interest with the secretaries as there is no interchange of duties; that it does not establish a community of interest that representatives of the various employe groups have met jointly with the administration to discuss wages and benefits since the end result was not equity in wages and benefits; that the end result of these meetings was an individual contract; that to create a wall to wall unit would put employes in the same unit with different wages, hours worked and benefits; that this is not community of interest and would render the collective bargaining process ineffective; the employes must be given the right to make the choice whether or not they want to be represented by a labor union; that the only way that choice can be implemented is by creating four separate bargaining units; and that to create a wall to wall unit would allow other employers to use the Commission to keep a non-union environment by forcing employes into the election process and, if that is not successful, by creating a bargaining environment that will make it very difficult for the elected representatives to address the needs and priorities that are created by the uniqueness of each job classification. Therefore, the Teamsters urge the Commission to let the best interest of the employes supercede the undue fragmentation argument.

As for the assistant head custodian, the Teamsters argue that no evidence was presented that supports a finding that the assistant is a supervisor; that the assistant normally performs 100% physical labor and 90% if he fills in for the head custodian; that the assistant can call in employes but never has; that the assistant takes care of the head custodians's duties when the head custodian is on vacation, based upon an assignment slip made out by the head custodian; that the assistant continues to receive his regular hourly rate while filling in for the head custodian; and that, therefore, the request to exclude the assistant head custodian as a supervisory employe should be denied.

District

The District argues that the appropriate unit is the wall to wall unit of all non-professional employes of the District; that all these employes participate in the shared purpose of educating students; that the employes in each of the four employe groups perform tasks which are generally more manual than purely intellectual in nature; that the duties and skills of the various support staff employes are not identical, but they are on a reasonably comparable level; that all support staff employes have basically the same fringe benefits and general working conditions, prorated based on days worked per year; that there is no wide disparity of wage rates between the four employe groups and there is even intermingling of the rates with some employes in each group making more and less than employes in the other groups; that the employes in all four groups have similar wages, hour and working conditions; that, generally, the overall supervisor in any school building is the principal; that no one group of support staff employes has an exclusive workplace; that, thus, all support employes share a common workplace; that there are only 55 support staff employes; that requiring the District and from one to four labor organizations to bargain separately with each of the four employe groups is unreasonable; that the additional costs attendant with

bargaining with four separate groups, including the additional cost to the State through WERC mediators, would be a wasteful use of taxpayer money; that, obviously, four separate bargaining units would amount to fragmentation; that the statute mandates the Commission to avoid fragmentation whenever possible; that although separate units can be appropriate, this is limited to special situations; that the Teamsters have not shown any special situation which exists here to justify four separate bargaining units; that, thus, the Commission must find that four separate bargaining units are not appropriate; that since no other party is proposing anything other than a wall to wall unit, the Commission must find the wall to wall unit appropriate; and that the bargaining history indicated that prior collective bargaining was done on a wall to wall unit basis.

As for the position of assistant head custodian, the District argues that the position is new and still in its developmental stages; that the assistant has participated in interviews of applicants for vacant custodial positions; that he has submitted his input to the head custodian; that in cases of emergency, the District would contact the assistant who lives closer than the head custodian; that the assistant is in charge when the head custodian is not working; that when in charge, the assistant can make and revise work assignments; that the wage scale for the assistant is \$.75 per hour higher than the maximum rate for custodians; that the supervisory duties of the assistant are not de minimis but are substantial; and that, therefore, the assistant head custodian is a supervisory employe within the definition contained in Sec. 111.70(1)(o)1, Stats.

DISCUSSION

Appropriate Bargaining Unit

Section 111.70(1)(b) of the Municipal Employment Relations Act (MERA) defines a "collective bargaining unit" as "the unit determined by the Commission to be appropriate for the purpose of collective bargaining." In determining whether the unit sought is appropriate, the Commission must consider Sec. 111.70(4)(d)2.a. of MERA which provides, in part, as follows:

The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, division, institutions, crafts, professions or other occupational groupings constitute a unit.

The Commission has interpreted this section to mean that at times there is a need for a mix of bargaining units which afford employes the opportunity to be represented in workable units by organizations of their own choosing, which may reasonably be expected to be concerned with the unique interests and aspirations of the employes in said unit.

When exercising our statutory discretion to determine whether a proposed bargaining unit is appropriate, we have consistently considered the following factors:

1. Whether the employes in the unit sought share a "community of interest" distinct from that of

other employes.

2. The duties and skills of employes in the unit sought as compared with the duties and skills of other employes.
3. The similarity of wages, hours and working conditions of employes in the unity sought as compared to the wages, hours and working conditions of other employes.
4. Whether the employes in the unit sought share separate or common supervision with all other employes.
5. The degree to which the employes 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.

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

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." 2/

The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employes have been unrepresented, an analysis of the development and operation of the employe/employer relationship. 3/ Although listed as a separate component, under some circumstances, analysis of bargaining history can provide helpful

1/ Arrowhead United Teachers v. WERC, 116 Wis.2d 580, 592 (1984):

. . . when reviewing the commission's decisions, it appears that the concept (community of interest) involves similar interests among employes who also participate in a shared purpose through their employment. (Emphasis supplied.)

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

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

insights as to how the parties, themselves, have viewed the positions in question in the past from the standpoint of both similar interests and shared purpose.

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 4/ and thus a single criterion or a combination of criteria listed above may be determinative. 5/

The record is clear in this matter that the custodians, food service workers, secretaries and teacher aides share a community of interest with each other. They share the common purpose of supporting the District's educational mission. The wages, hours and conditions of employment are similar among the four job classifications. While the wage rates are not identical, they do not have to be for there to be community of interest, for the parties are able to make distinctions between job classifications and to pay those classifications accordingly. Overall the wage rates for the various groups are similar. The wage similarities are even clearer in the area of fringe benefits. Except for the part-time employees, these employees receive the same benefits. The differences in the level of benefits received by particular employees are not related to job classification but to percentage of the year worked. In addition, these employees share common work places and they share at some level the common supervision of the school principal.

Further, the District meets with representatives of the four job classifications together, not separately, to discuss wages, hours and conditions of employment.

But the Teamsters argue that the custodians and teacher aides are the only two groups that wish to organize and that forcing them into an election with the food service workers and secretaries will deprive the custodians and food service workers of their protected right to organize into a labor union. The only way to protect that right, according to the Teamsters, is by creating four separate bargaining units. But this is not a case where there is a minority groups whose interests will be subordinated by the majority. Indeed, together the custodians and teacher aides form a majority of the wall to wall unit with 10 custodians (including the assistant head custodian) and 20 teacher aides, a total of 30 out of 56 bargaining unit members. Besides, even though testimony was received that only the custodians and teacher aides are interested in a union, such testimony is irrelevant to our appropriate unit analysis particularly where, as here, another union seeks to represent the employees Teamsters assert are not interested in representation.

In addition, we continue to be mindful of the statutory proscription found in Sec. 111.70(4)(d)2.a. of MERA to "avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force." The Teamsters have not convinced us of the need for four bargaining units for 56 employees (including the assistant head custodian). Forcing the District to negotiate with possibly four bargaining units, potentially with different bargaining representatives, in units as small as

4/ 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).

5/ 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).

nine and ten members, would place a major burden on the District, especially as these employes have a community of interest with each other and the District has provided for similarity in the wages, hours and working conditions of these employes.

For these reasons, we do not find four separate bargaining units to be appropriate but do find a wall to wall unit of non-professional employes to be appropriate. 6/

Supervisory Status

Section 111.70(1)(o)1, Stats., defines the term "supervisor" as follows:

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

In determining a position's supervisory status under Sec. 111.70(1)(o)1, Stats., the Commissions considers the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employes;
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 alleged supervisor is paid for the employe's skills or for the supervision of employes;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the alleged supervisor is a working supervisor or whether the employe spends a substantial majority of time supervising other employes; and

6/ Cases where we have found a wall to wall unit appropriate include School District of Milton, Dec. No. 19039 (10/81); Columbus School District, Dec. No. 17259 (9/79); and Wisconsin Heights School District, Dec. No. 17182 (8/79).

7. The amount of independent judgment exercised in the supervision of employees.

Not all of the above factors need be present when the Commission determines a position's supervisory status, but if a sufficient number of these factors are present the Commission will find the position to be supervisory.
7/

The record is clear that the assistant head custodian does not possess the necessary authority to be excluded from the bargaining unit as a supervisory employe. His role in the hiring process has been no different than any other custodian's. Indeed, the one specific time he was asked for his opinion, it was not followed. While he may have some added responsibility when the head custodian is gone, said responsibility is very limited, more in line with that of a lead worker than a supervisor. When the head custodian is present, the assistant head custodian spends 100% of his time doing the physical labor that other custodians do, and he is paid at a rate of pay comparable to custodians, not supervisors. In addition, the nine custodians (not including the assistant head custodian) are not only supervised by the head custodian but by the four school principals as well, leaving very little if any need to be supervised by the assistant head custodian. This is especially true as four of the custodians are at schools different from the school where both the head and the assistant head custodian work, and that five custodians are at the school where the head custodian works.

For these reasons, we find that the assistant head custodian is not a supervisory employe but is a municipal employe, and, therefore, is included in the bargaining unit.

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

7/ Somerset School District, Dec. No. 24968-A (WERC, 3/88).