

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
STURGEON BAY SCHOOL DISTRICT
Involving Certain Employes of
STURGEON BAY SCHOOL DISTRICT

Case 22
No. 50580 ME-692
Decision No. 27519-D

In the Matter of the Petition of
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO
To Initiate Interest Arbitration
Between Said Petitioner and
STURGEON BAY SCHOOL DISTRICT

Case 25
No. 51748 INT/ARB-7192
Decision No. 28400

Appearances:

Davis & Kuelthau, S.C., by Ms. Nancy L. Pirkey and Mr. Clifford B. Buelow, 111 East Kilbourn, Suite 1400, Milwaukee, WI 53202-6613, appearing on behalf of the District.

Mr. Gerald D. Uglund, Staff Representative, AFSCME Council 40, P.O. Box 370, Manitowoc, WI 54221-0370, and Mr. Michael J. Wilson, Staff Representative, AFSCME Council 40, 8033 Excelsior Drive, Suite B, Madison, WI 53717, appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-captioned District petition for unit clarification was filed on February 16, 1994. The above-captioned Union petition for interest arbitration was filed on October 27, 1994.

Following procedural developments detailed in the Findings of Fact, a dispute exists between the above-noted Union and District regarding whether the Union is entitled to exclusive collective bargaining representative status as regards professional teacher aides employed by the District. That issue arose first as an as yet unresolved portion of proceedings regarding the District's Case 22 unit clarification petition. The same issue was presented by the District's November 9, 1994 motion to dismiss the Union's Case 25 petition for interest arbitration.

No. 27519-D
No. 28400

In lieu of a hearing and formal investigation, the parties entered into a stipulation of fact on March 6, 1995, through communications with Commission Examiner and Investigator Marshall L. Gratz. The parties each submitted a brief on or before March 18, 1995.

Upon consideration of the facts stipulated by the parties, the Commission issues the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The Sturgeon Bay School District (referred to herein as the District) is a municipal employer with offices at 1230 Michigan Street, Sturgeon Bay, Wisconsin.

2. Wisconsin Council 40, AFSCME, AFL-CIO (referred to herein as the Union) is a labor organization with an office located at c/o Gerald Ugland, Staff Representative, PO Box 370, Manitowoc, Wisconsin.

3. At all material times, the District has employed teacher aides.

4. Some but not all of the teacher aides employed by the District have been employees who hold a license issued by the state superintendent of public instruction under Sec. 115.28(7), Stats., and whose employment requires that license. (Those teacher aides are referred to herein as professional teacher aides or certified teacher aides. The other teacher aides in the District's employ are referred to herein as non-professional, non-certified, or un-licensed teacher aides.)

5. On November 3, 1992, the Union filed with the Wisconsin Employment Relations Commission (referred to herein as the WERC or Commission) a petition for a representation election with regard to certain teacher aides employed by the District. At that time, the District's teacher aides did not have an exclusive collective bargaining representative.

6. Following the parties' execution of a stipulation for election in December of 1992, the WERC directed, conducted and certified the results of a secret ballot election regarding a bargaining unit consisting of "all regular full-time and part-time teacher aides employed by the Sturgeon Bay School District, excluding certified, supervisory, managerial, confidential, clerical, custodial and maintenance employees, and bus drivers" (referred to herein as the original teacher aide unit or as the mixed unit), as follows:

Eligible to vote	22
Ballots Cast	18
Ballots Challenged	0
Ballots Blank	0
Valid Ballots Counted	18
Ballots Cast for Wisconsin	
Council 40, AFSCME, AFL-CIO	15
Ballots Cast for No Representation	3

On that basis, on February 17, 1993 in Dec. No. 27519-A, the WERC certified that the Union was the exclusive collective bargaining representative of the original teacher aide unit described above.

7. On June 2, 1993 the Union and the District met for their first negotiation session, at which the Union presented its initial bargaining proposals. The Union's initial proposals included a wage offer for all employees in the original teacher aide bargaining unit. After the initial bargaining session the Union and District met to negotiate for an initial contract for the original teacher aide bargaining unit on several occasions. On one such occasion, occurring on December 1, 1993, District Administrator Jerome Kain, offered the original teacher aide bargaining unit a twenty-five (25) cent per hour raise effective on July 1, 1993 and another incremental raise of the same magnitude on July 1, 1994 with continuation of all previously existing fringe benefits.

8. On August 12, 1993, prior to any collective bargaining agreement being entered into between the District and the Union with regard to the teacher aide unit, 1993 Act 16 (herein Act 16) took effect modifying the Sec. 111.70(1)(b), Stats., definition of "collective bargaining unit" to read "a unit consisting of municipal employees who are school district professional employees or of municipal employees who are not school district professional employees that is determined by the commission to be appropriate for the purpose of collective bargaining" and adding Sec. 111.70(1)(ne) defining a "school district professional employee" as "a municipal employee who is employed by a school district, who holds a license issued by the state superintendent of public instruction under s. 115.28(7), and whose employment requires that license."

9. The teacher aides who were eligible to vote in the representation election referred to in Finding of Fact 6, above, were employed in several job categories. On January 26, 1994, the District proposed job classifications for the original teacher aide unit as follows:

- Student Specific Special Education
- General Special Education
- Educational Interpreters
- General Education Aides
- Chapter One Aides
- Playground Supervisory/Noon Hour Supervisors/Study Hall Monitors

10. On February 4, 1994, the Union filed a petition to initiate interest arbitration with respect to its negotiations for an initial collective bargaining agreement with the District regarding the original teacher aide unit. (Case 23, No. 50499, INT/ARB-7191, Amedeo Greco, Investigator).

11. Prior to February 16, 1994, bargaining between the Union and the District regarding the original teacher aide bargaining unit included but was not limited to bargaining regarding employees licensed under Sec. 115.28(7), Stats. The parties stipulate that, by engaging in those negotiations regarding the original teacher aide unit, the District neither voluntarily agreed to recognize the Union as representative of a separate unit of professional teacher aides nor waived any right the District may have had to petition to remove the professional teacher aides from the original teacher aide unit.

12. On February 16, 1994, the District petitioned WERC for an order clarifying the original

teacher aide unit so as to alter the original teacher aide unit to include only "all regular full-time and regular part-time non-certified teacher aides" and to exclude "all certified teacher aides including special education aides and educational interpreters."

13. In response to the District's unit clarification petition, the WERC, on October 4, 1994, issued an order amending the Union's certification. (Dec. No. 27519-C as corrected by letter on October 11, 1994). In that order, WERC described the District's petition for unit clarification, described the original teacher aide unit, noted that the parties had agreed to exclude from the original teacher aide unit those aides whose positions constitute "school district professional employees" within the meaning of Act 16, and further noted, "[t]he parties have not agreed regarding the bargaining unit placement of those aides whose positions are being so excluded, so that remains an issue in this proceeding following the issuance of this Order." The order concluded by revising the Certification of Representative issued on February 17, 1993 to certify that Wisconsin Council 40, AFSCME, AFL-CIO is the exclusive collective bargaining representative of a bargaining unit consisting of

All regular full-time and all regular part-time teacher aides employed by the Sturgeon Bay School District, excluding teacher aides who hold a license issued by the state superintendent of public instruction under Sec. 115.28(7), Stats., and whose employment requires that license, and excluding certified, supervisory, managerial, confidential, clerical, custodial and maintenance employees, and bus drivers.

(The unit described in that amended certification is referred to herein as the non-professional teacher aide unit.)

14. Since the October 4, 1994 order (as corrected on October 11, 1994):

- a. the WERC has not issued any other order in the above-captioned cases;
- b. the District has not voluntarily recognized the Union as representative of the proposed professional teacher aide unit or of any other bargaining unit including professional teacher aides employed by the District; and
- c. the parties' negotiations and informal investigation activities with Investigator Greco in Case 23 have addressed only the non-professional teacher aide unit. As of March 6, 1995, no collective bargaining agreement had been finalized between the parties in those negotiations, and the investigation in Case 23 had not been closed.

15. On October 27, 1994, the Union petitioned the WERC to initiate interest arbitration with

respect to a bargaining unit described in the petition as "all regular full-time and regular part-time teacher aides employed by the District, who hold a license issued by the state superintendent of public instruction under Section 115.28(7), Stats., and whose employment requires that license, excluding un-licensed teacher aides, certified, supervisory, managerial, confidential, clerical, custodial and maintenance employees, and bus drivers; as said bargaining unit was certified by the Wisconsin Employment Relations Commission Decision No. 27519-A on February 17, 1993, and any supplemental rulings or agreements thereto." (Case 25 No. 51748, INT/ARB-7192, Marshall Gratz, Investigator). (The bargaining unit described in the Union's Case 25 interest arbitration petition is referred to herein as the proposed professional teacher aide unit.)

16. On November 9, 1994, the District filed a motion to dismiss the Union's Case 25 interest arbitration petition on the grounds that the Union has been neither certified by WERC nor voluntarily recognized by the District as the exclusive representative of the employees in the proposed professional teacher aide unit, such that the Union does not represent the employees in that unit.

17. The Union opposes the District's motion and asserts that the Union is entitled to a presumption of continuing majority representative status in both the professional and non-professional teacher aide units into which Act 16 permitted splitting the original teacher aide unit for which the Union was elected and certified as exclusive representative.

18. The District's work force includes a unit of certified teaching personnel that includes school district professional employees. Neither the District nor the Union nor any other labor organization has proposed that the District's professional teacher aides should be placed in that existing bargaining unit of certified teaching personnel.

19. The District has not asserted that the proposed professional teacher aides bargaining unit would be an inappropriate bargaining unit under MERA as amended by Act 16.

CONCLUSIONS OF LAW

1. Under Sec. 111.70(4)(d), Stats., the Union's election and certification as exclusive collective bargaining representative of the original teacher aide unit entitled the Union to a presumption of continuing majority representative status regarding both the District's non-professional teacher aides and the District's professional teacher aides following the separation of those two groups pursuant to 1993 Act 16.

2. Under Sec. 111.70(4)(d), Stats., neither the proceedings to date in Case 22 nor any of the other facts stipulated by the parties are sufficient to rebut the presumption that the Union continues to be entitled to majority representative status as regards the District's professional teacher aides.

3. A bargaining unit consisting of all regular full-time and all regular part-time teacher aides employed by the Sturgeon Bay School District who hold a license issued by the state superintendent of public instruction under Sec. 115.28(7), Stats., and whose employment requires that license, and excluding all other teacher aides and all certified, supervisory, managerial, confidential, clerical,

custodial and maintenance employees, and bus drivers is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

4. Under Sec. 111.70(4)(d), Stats., at all times since its certification as exclusive collective bargaining representative of the original teacher aide unit, the Union has been and continues to be the exclusive collective bargaining representative of the employees in the bargaining unit described in Conclusion of Law 3, above.

5. Under Sec. 111.70(4)(cm), Stats., the Union is entitled to petition for interest arbitration with respect to negotiations with the District concerning wages, hours and conditions of employment of the employees in the bargaining unit described in Conclusion of Law 3, above.

ORDER 1/

1. The Commission's October 4, 1994 Order Amending Certification (as corrected by letter on October 11, 1994) is revised to certify that Wisconsin Council 40, AFSCME, AFL-CIO is the exclusive collective bargaining representative of separate bargaining units consisting of

A. All regular full-time and all regular part-time teacher aides employed by the Sturgeon Bay School District, excluding teacher aides who hold a license issued by the state superintendent of public instruction under Sec. 115.28(7), Stats., and whose employment requires that license, and excluding certified, supervisory, managerial, confidential, clerical, custodial and maintenance employees, and bus drivers.

and

B. All regular full-time and all regular part-time teacher aides employed by the Sturgeon Bay School District who hold a license issued by the state superintendent of public instruction under Sec. 115.28(7), Stats., and whose employment requires that license, and excluding all other teacher aides and all certified, supervisory, managerial, confidential, clerical, custodial and maintenance employees, and bus drivers.

2. The District's motion to dismiss the Union's Case 25 interest arbitration petition is denied.

Given under our hands and seal at the City of Madison,
Wisconsin, this 10th day of May, 1995.

1/ Footnote found on pages 7 and 8.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner

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

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

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

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

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

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

. . .

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

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

STURGEON BAY SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

As the Findings of Fact set forth in greater detail, the Union was elected and certified in the original teacher aide unit which combined professional teacher aides (i.e., those who hold a license issued by the state superintendent of public instruction under Sec. 115.28(7), Stats., and whose employment requires that license) with non-professional teacher aides in the employ of the District. (In this decision the term "teacher aide" is used generically, such that it includes the various classifications of teacher aides employed by the District. See Finding of Fact 9, above). During the parties' negotiations for an initial agreement regarding that unit, 1993 Act 16 changed statutory definitions such that the original teacher aide unit was no longer an appropriate unit. The District filed a unit clarification petition seeking removal of the professional aides from the unit. The Union subsequently filed an interest arbitration petition regarding the original teacher aide unit negotiations. Thereafter, the Union agreed to exclude from the existing unit those aides whose positions constitute "school district professional employees" within the meaning of Sec. 111.70(1)(ne), Stats., as created by Act 16. However, as noted in the Commission's October, 1994 order removing the professional aides, "The parties have not agreed regarding the bargaining unit placement of those aides whose positions are being so excluded, so that remains an issue in this proceeding following the issuance of this Order." The Union subsequently filed its Case 25 interest arbitration petition concerning a bargaining unit consisting of the District's professional teacher aides, and the District responded by filing its motion to dismiss that petition on the grounds that the Union is neither voluntarily recognized nor certified as exclusive representative of the District's professional teacher aides.

POSITION OF THE UNION

The Union requests that the Commission certify it as representative of the District's professional teacher aides in these proceedings and that the Commission deny the District's motion to dismiss the Union's petition for interest arbitration in a professional teacher aides unit.

In support of its position, the Union cites Grafton School District, Dec. No. 28093 (WERC 6/94) (herein Grafton I); Grafton School District, Dec. No. 28093-A (WERC, 11/94) (herein Grafton II) and Milwaukee Board of School Directors, Dec. No. 25143 (WERC, 2/88) (cited in Grafton I at n.1,p.7 for the proposition "Like certified units, voluntarily recognized units enjoy a presumption of majority status.")

The Union's original certification and its timely-filed petition for interest arbitration in the original unit establish a presumption that the Union enjoys majority status among both the professional and non-professional aides of the District which status the District is barred from

challenging at this time by the pendency of the Union's timely-filed petition for interest arbitration in the original unit. For those reasons, in a materially parallel factual setting in Grafton I (at p.3), the Commission stated, "The Association continues to be the collective bargaining representative of the district employees."

Whereas the Grafton district agreed to resolve the issue of unit placement of the professional aides voluntarily, the Commission needs to rule on that question in this case. The Commission should determine that the professional teacher aides are an appropriate bargaining unit and that it is appropriate to process the Union's interest arbitration petition concerning that unit.

The District's attempt to challenge the Union's status as representative of the professional aides portion of the original unit is contrary to the Commission's determinations in Grafton II as to when and under what circumstances such a challenge would be timely and proper.

POSITION OF THE DISTRICT

The District requests that the Commission reject the Union's effort to become certified as representative of the District's professional teacher aides in these proceedings and that the Commission dismiss the Union's petition for interest arbitration in a professional teacher aides unit.

The pendency of the Union's petition for interest arbitration in the original unit does not bar a Commission ruling against the Union on the residual issues remaining from the District's unit clarification petition. Unlike Grafton I, which involved a declaratory ruling that an election petition could not be timely filed to determine the Union's continuing majority status, this case involves the District's petition for a unit clarification. The Commission treats petitions for elections and for unit clarification differently as regards when they can be filed and whether a contract bar applies to them, citing, Howard-Suamico School District, Dec. No. 23639-A (WERC, 11/89); Milwaukee Board of School Directors, Dec. No. 25143 (WERC, 2/88); and Milwaukee County, Dec. No. 14786-B (WERC, 4/80). Just as the contract bar is not a relevant consideration in a unit clarification proceeding, neither should the interest arbitration rule bar the processing of a unit clarification petition.

The Union is improperly seeking in a unit clarification proceeding to be certified as representative of a unit of professional teacher aides that does not yet exist. A unit clarification petition does not challenge the majority status of a representative, citing, Milwaukee Board of School Directors, Dec. No. 25143 (WERC, 2/88). A unit clarification proceeding determines only whether selected positions are properly included or excluded from an existing bargaining unit, citing, Milwaukee Board of School Directors, Dec. No. 14614-B (WERC, 2/77). The instant proceedings concerning the District's unit clarification petition are therefore the wrong forum in which to seek a determination that the Union has a presumption of majority status regarding a unit of professional teacher aides excluded from the original mixed teacher aide unit. The Union should be required to file a petition for election if it wishes to be certified as the exclusive representative of such a unit.

The District's unit clarification petition did not and could not challenge the Union's majority status as regards the non-professional teacher aides. By filing that petition, the District simply sought and achieved removal of "school district professional employees" whose positions could no longer be included in the same unit with non-professional employees under 1993 Wisconsin Act 16. The Commission need not and should not use the filing of that unit clarification petition to grant the Union representational status in a unit it has not previously represented.

Neither Grafton II nor any other case cited by the Union constitutes legal authority for the Commission doing so. Unlike Grafton II, the District in this case has not voluntarily recognized the Union as exclusive representative of the professional aides group. Certifying the Union without voluntary recognition or an election in a professional teacher aides unit that never previously existed would also ignore the statutory rights of the affected employees to select the representative of their choice. The Commission has previously held that employees' rights to select or reject union representation are a sufficient reason not to accrete employees to an existing unit, citing, Adams County (Highway Department), Dec. No. 27093 (WERC, 11/91); City of Watertown, Dec. No. 24789 (WERC, 8/87); and City of Clintonville, Dec. No. 19858 (WERC, 8/82). The Commission also found that employee rights to free choice in the selection of a bargaining agent outweigh a municipal employer's efforts to streamline its bargaining by merging two existing bargaining units by unit clarification in City of Milwaukee, Dec. No. 7432-A, 6215-O (WERC, 12/87). There is no legal basis for treating employees excluded from a bargaining unit by unit clarification differently from employees subject to accretion into a new bargaining unit or subject to consolidation of their bargaining unit with another unit. To do as the Union asks in this case would be unfair, undesirable and unduly restrictive of employees' rights to select their own bargaining representative.

The Commission's October, 1994 Order excluded professional teacher aides from the unit for which the Union is the certified representative. It did not similarly certify the Union with respect to the District's professional aides, and the Union has not been voluntarily recognized regarding a professional aides unit either. Unless and until it prevails in an election, the Union has no right to represent the professional aides and no right to process an interest arbitration petition regarding their interests.

DISCUSSION

The issue presented in this dispute concerns the impact of the separation of professional and non-professional aides pursuant to statutory changes enacted in 1993 Act 16, on the status of the exclusive representative of a mixed unit of school district aides.

As noted in Finding of Fact 8, Act 16 rendered inappropriate the mixed unit originally certified in February of 1993. However, the statutory changes neither mandated that mixed units be remedied in a way that leaves some of the previously-represented employees unrepresented, nor established that a mixed unit could only be remedied by removing school district professional employees from units including school district non-professional employees. Rather, the inappropriate mixed unit in this dispute could have been remedied by an order amending the certified unit to

remove the non-professional employees from the existing unit, or to remove the professional employees from the existing unit, or to certify that the Union represents separate professional aide and non-professional aide units.

We issued the October, 1994 order certifying the Union with regard to the nonprofessionals before determining the Union's status in relation to the professional aides because we found it desirable to free the parties to bargain about the non-professional unit (as to which there was no remaining dispute) without awaiting a hearing and decision about the unresolved bargaining unit placement of the professional employees. The Union did not relinquish its claim to represent both the professional and nonprofessional components of the original unit. Accordingly, we expressly noted in the October, 1994 order that the bargaining unit placement of the professionals remained a matter in dispute following our issuance of that order.

The fact that the two components of the original unit have been addressed in piecemeal fashion (to permit interim bargaining in the nonprofessional unit) does not require or warrant applying different decisional standards in deciding the propriety of certifying the Union as representative of the professional component than we would have applied had we dealt with all aspects of this dispute at once.

The facts that the Union had never before represented a unit limited to District non-professional aides and that the non-professionals had not separately chosen the Union as representative of that narrower unit did not prevent us from amending the certification in October of 1994 to certify the Union as representative of a unit limited to the District's non-professional aides by removal of the professionals. Conversely, the facts that the Union never before represented a unit limited to District professional aides and that the professional aides have not separately voted for the Union are not impediments to certifying the Union as representative of the District's professional aides, either. In both respects, certifying the Union as representative of employees in a unit narrower in scope than the one in which the Union was originally selected was and is justified by the fact that the Union was originally elected and certified to represent the original mixed unit. By reason of its original election, the Union enjoys a presumption of continued majority status in both the professional and non-professional components of the original teacher aide unit.

That an exclusive representative enjoys such a presumption in general was noted in Grafton I at n1.p.7, citing, Milwaukee Board of School Directors, Dec. No. 25143, above. Our declaratory ruling in Grafton I further established, at least implicitly, that that presumption is not rebutted by Act 16's rendering a mixed school district aide unit inappropriate. Thus, when we declared in that case that the mixed aide unit represented by the Grafton Association was rendered inappropriate by Act 16, we went on to declare -- before the Grafton District voluntarily recognized the Association as representative of a separate unit of its professional aides -- that "The Association continues to be the collective bargaining representative of the District employees," and that hearings would be conducted "to determine the scope of the unit(s) in which the Association may appropriately continue to represent the District employees."

Here, the parties have agreed that the Union would continue to represent the District's

non-professional aides in a separate non-professional aides unit, but there remains a dispute about the right of the Union to represent the District's professional aides. For the following reasons, we conclude that the instant record presents no considerations sufficient to rebut the above-noted presumption that the Union continues to enjoy majority representative status as regards the professional aide component of the unit in which the Union was originally elected and certified.

We are satisfied that the professional aides unit is an appropriate unit standing alone. The District does not contend that such a unit would be inappropriate, and no one has proposed that the professional aides be merged with the District's only other existing unit of professional employees, the certified teaching personnel unit. The question of whether the professional aides might more appropriately be placed in some other unit than a unit onto themselves can therefore be answered in the negative.

The District's unwillingness to stipulate to the issuance of a certification of the Union as representative of the professional aides is not a persuasive basis on which to deny the Union's request for certification as to the second of the two components into which Act 16 caused the original teacher aide unit to be split.

The prior procedural developments in Case 22 do not warrant the conclusion urged by the District. It is the unusual procedural development of the instant unit clarification proceeding that makes it appear that the Union is seeking to obtain representation rights regarding unrepresented professional aides without an election. However, when this dispute is properly analyzed as if the unit placement status of the professional aides and of the non-professional aides were being determined at the same time, the Union's request is that it be certified to continue as representative of both the professional and non-professional aide components of the mixed unit for which it was duly elected.

In the circumstances of this dispute, the presumption of continuing majority status described above is a persuasive and sufficient legal principle upon which to conclude that the Union continues to enjoy majority representative status as regards the professional (as well as the nonprofessional) component of the mixed aide unit for which it was originally certified. Our decision in those regards is not based on the pendency of any or all of the interest arbitration petitions filed by the Union as regards District aide personnel.

The District's reliance on Adams County and City of Watertown, above, is unpersuasive. In those cases the Commission declined to combine employees, some or all of whom were unrepresented, with represented employees in an existing unit, without a vote. In contrast, the Union here is essentially seeking to continue its representation of the District's aides in two units instead of a mixed one in order to conform the unit structure to the Act 16 changes in statutory definitions. The District would have us render unrepresented the professional aides who were represented by the Union in the mixed unit prior to the filing of the District's petition for unit clarification.

Also unpersuasive is the District's reliance on City of Clintonville and City of Milwaukee,

Dec. No. 7432-A, 6215-O, above. In those cases, the Commission declined to combine appropriate units without a vote. Here, in contrast, Act 16 rendered the Union's previously-certified unit inappropriate. Determination of the unit placement for all of the employees in that inappropriate unit is a proper Commission response to the District's petition seeking clarification of the unit to conform with Act 16. At least in the circumstances of this case, certifying the prior representative of the now-inappropriate unit as representative of each of two appropriate units into which the mixed unit has been split continues the Union's representative status with respect to all of those employees without creating an inappropriate unit. That outcome also gives effect to the free choice made by all of the aides when they elected to be represented by the Union in the first place.

For the foregoing reasons, we have ordered the certification amended to certify the Union as representative of separate units of non-professional aides and professional aides, and we have denied the District's motion to dismiss the Union's petition for interest arbitration with regard to the professional aides unit.

Dated at Madison, Wisconsin this 10th day of May, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner