

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN EDUCATION ASSOCIATION  
COUNCIL

Involving Certain Employees of

WEST BEND JOINT SCHOOL DISTRICT NO. 1

Case 72

No. 51007 ME-3411

Decision No. 28491

Appearances:

Mr. Stephen Pieroni, Staff Counsel, and Ms. Laura Amundson, Associate Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P. O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the Petitioner.

Ms. Anne L. Weiland, Attorney at Law, W182 N9052 Amy Lane, Menomonee Falls, Wisconsin 53051, appearing on behalf of the District.

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DIRECTION OF ELECTION

On May 19, 1994, the Wisconsin Education Association Council filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the West Bend Joint School District No. 1. Hearing on the petition was held in West Bend, Wisconsin, on November 14 and 15, 1994, by Commission Examiner Douglas V. Knudson. The hearing was transcribed and a copy of the transcript was received on November 28, 1994. The parties completed the filing of post-hearing written briefs on January 31, 1995. The Commission, having reviewed the matter and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. The West Bend Joint School District No. 1, herein the Employer, is a municipal employer and has its offices at 697 South Fifth Avenue, West Bend, WI 53095.
2. The Wisconsin Education Association Council, herein WEAC, is a labor

No. 28491

organization and has its offices at 33 Nob Hill Drive, Madison, WI 53708.

3. The petition filed by WEAC requests an election in a bargaining unit consisting of "All regular full-time and regular part-time (employees who work more than 10 hours per week but are continuous employees) operations/maintenance/custodial employees, excluding supervisory, managerial, confidential, professional, limited-term (temporary employees who are separated from the payroll after less than one year of work) and student employees." The unit would consist of the group of employees referred to by the parties as CUMTOP (an acronym used to refer to a group of 31 regular full-time custodial, maintenance and operations employees). In the alternative, WEAC urges the Commission to direct an election in a bargaining unit consisting of all regular full-time and regular part-time custodial, maintenance and operations employees, but excluding seasonal, supervisory, managerial, confidential and all other employees, which unit would include the CUMTOP group and janitorial employees but exclude the seasonal janitorial employees who work only in the summers and during school recesses. The Employer takes no position as to whether the employees working as janitors should be included in the bargaining unit with the CUMTOP employees. However, the Employer would object to any bargaining unit which includes or excludes employees solely based upon whether or not they are students, whether under or over the age of 18. The parties stipulated that "seasonal employees", i.e., those hired only for summer work or work during school recesses, are not appropriately included in any bargaining unit of custodial, maintenance and operations employees.

4. The Employer would exclude from any group of voters as supervisors the thirteen employees who occupy the positions of Head Custodian, Head Janitor and Head Groundskeeper. WEAC does not agree that any of said employees are supervisors. The position descriptions for the Elementary Head Custodian, Middle School Head Custodian and High School Head Custodian all state in pertinent part:

General Responsibilities: Works with minimal supervision while providing a physical environment which compliments the educational process. Coordinates the activities of . . . man-hours per school day. . . . Assures that all building equipment and components are properly maintained either by personal attention or that of other Maintenance personnel.

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**ESSENTIAL FUNCTIONS:**

1. Supervises and coordinates activities of workers engaged in cleaning and maintaining district buildings.

2. Inspects completed work for conformance to standards.

3. Requisitions and issues supplies and equipment.
4. Performs personnel duties (hiring, training, discipline and discharge).
5. Perform daily cleaning duties as need arises.
6. Responsible for maintenance of equipment and building components.
7. Coordinate special events or other usages of the building.

**MARGINAL FUNCTIONS:**

1. Maintain building exterior and grounds including shoveling snow from sidewalks, trimming grass and bushes, and cleaning exterior surfaces.
2. Perform other tasks as necessary or as assigned.

The position description of the Head Janitor states in pertinent part:

General Responsibilities: Works with minimal supervision while providing a physical environment which compliments the educational process. Coordinates the activities of the other janitorial personnel. Assures that all building equipment and components are clean and properly maintained either by personal attention or by the direction of other janitorial personnel.

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**ESSENTIAL FUNCTIONS:**

1. Under the direction of the building Head Custodian supervise the activities of janitorial personnel; provide input for hiring, training, and disciplinary decisions.
2. Cleans Common Areas of schools including halls and bathrooms, locker rooms.

3. Clean classroom equipment (desks, table, chalk boards).
4. During summer, conduct thorough cleaning and sanitizing including but not limited to light fixtures, wood work, lockers, desks, and floors.
5. Maintain building security.
6. Assist with the coordination and set up of special events or other usages of the building.
7. Must comply with safety rules (e.g. (sic) OSHA, AHERA, etc.) and other District policies.

**MARGINAL FUNCTIONS:**

1. Could direct the activities of other janitorial personnel.
2. Maintain building exterior and grounds including shoveling snow from sidewalks, trimming grass and bushes, and cleaning exterior surfaces.
3. Monitor building systems and components for proper operation and report any problems to the Head Custodian.
4. Perform other tasks as necessary or as assigned.

The position description of the Head Groundskeeper states in pertinent part:

General Responsibilities: Works with minimal supervision while providing a physical environment which compliments the educational process. Assures that all parking lots, playgrounds, sports facilities, and other exterior grounds areas are properly developed and maintained.

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**ESSENTIAL FUNCTIONS:**

1. Direct the activities of all Groundskeeping personnel and of a

Maintenance Helper(s) when one is assigned.

2. Maintain all athletic fields, including marking, seeding, fertilizing, aerating and watering.
3. Responsible for the maintenance of all groundskeeping equipment.
4. Monitor weather conditions and determine when it is necessary to apply salt or plow snow. This decision includes determining which equipment and personnel are required during all adverse weather conditions.
5. Assure compliance with safety rules (e.g., OSHA, AHERA, etc.)
6. All duties as assigned to Groundskeeper or to Assistant Groundskeeper.

**MARGINAL FUNCTIONS:**

1. Perform other tasks as necessary or as assigned.

5. The Employer has three existing bargaining units consisting of (1) teachers and support professional employees numbering approximately 477, (2) aides numbering approximately 127, and, (3) secretarial/clerical employees numbering approximately 44. There are approximately 72 food service employees and bus drivers who are not represented in bargaining units.

The Employer and a committee of CUMTOP employees have participated in a "meet and confer" relationship for a number of years with respect to the wages, hours and working conditions of the CUMTOP employees. Agreements between CUMTOP and the Employer have been reduced to written documents covering two school years each.

In 1992, the Employer hired a consultant to develop new job descriptions for all of the positions in the Facilities and Operations Department. Subsequently a committee, consisting of 11 CUMTOP employees and Warren Schmidt, Department Director, conducted a job evaluation and ranking study using a plan with 8 factors each of which contained multiple levels to which varying amounts of points were assigned. One of the factors was responsibility for the work of others. The job classifications were then assigned to pay ranges.

6. The Employer has 544 full-time and 291 part-time employees. It has an annual

budget of nearly 40 million dollars, of which approximately \$3,200,000 is allocated to the Department of Facilities and Operations. The Department of Facilities and Operations is responsible for the maintenance and operation of one small school from which the Head Start and Chapter One programs are run, six elementary schools, two middle schools, one large building housing two high schools, an operations and maintenance building and two parcels of

land which do not contain any buildings. Warren Schmidt has been the Director of the Department of Facilities and Operations since mid-June of 1990. Schmidt reports to the Administrator of Finance, Elizabeth Rossiter. In addition to Schmidt, the staff of the Department consists of a secretary, 31 CUMTOP employes (those custodial, maintenance and operations employes who work 40 hours per week and 12 months a year), 44 janitorial employes (including approximately 20 high school students) most of whom work 20 hours per week during the school year and 40 hours per week during the summer, 13 janitorial employes working 20 hours per week each during the school year, but not working during the summer, and, 23 employes working 40 hours per week each during the summer, but not working during the school year.

Each of the six elementary schools is assigned a Head Custodian who reports directly to Schmidt. The Head Custodians work alone on the day shift and spend the vast majority of their shift performing cleaning and routine maintenance in the buildings. Also assigned to each elementary school to perform cleaning duties on the second shift are one employe in the classification of Janitor II and three employes in the classification of Janitor I. The combined work hours of the four Janitors is 16 hours per day, except at the McLane School where the allotment is 18.5 hours per day. The Janitor II performs the same duties as the Janitor I, except that the Janitor II is responsible for locking the building entrances before leaving work and for setting up rooms for special events.

Each Elementary Head Custodian oversees the work of the Janitors assigned to their respective building. Since their shifts do not overlap, each Head Custodian has permission to work an average of one hour of overtime a week during the second shift to check on the Janitors and to provide training as needed either by extending their shift to overlap with the work hours of the Janitors or by making a special visit to the second shift. The Head Custodian has the authority and responsibility for reviewing the building each morning to ascertain if the assigned work areas are clean and the assigned work has been completed, and for responding to reports and complaints from other staff regarding the work of the Janitors. It takes about 15 minutes to explain the basic cleaning tasks to a new Janitor. Additional time may be necessary later to review certain tasks or to demonstrate how to perform other tasks.

The Head Custodian at the Badger Middle School, David Schwinn, oversees the work of one Custodian on the day shift and a second shift crew consisting of a Head Janitor, Deanna Commons, and ten Janitors. Schwinn's normal shift ends at 3:30 p.m., which is the starting time for Commons' normal shift. Thus, Schwinn and Commons are able to meet and talk briefly about work-related matters almost every day.

The Head Custodian at the Silverbrook Middle School, Carl Kufahl, oversees the work of one Janitor on the day shift and a night shift crew consisting of a Lead Custodian (this is not a contested position) and three Janitors.



The Head Custodian at the high schools, Kathleen Diels, oversees five employees on the day shift (two Maintenance employees, a Custodian, a Laundry employee and a Janitor) and a night shift consisting of two Custodians, two Head Janitors (Keith Anderson and John Shebanek) and approximately twenty-one Janitors.

The Head Groundskeeper (James Berend) oversees a crew of three Groundskeepers and two Janitors.

7. The Head Custodians possess and generally exercise significant independent disciplinary authority. The Head Janitors possess and generally exercise a lesser amount of disciplinary authority than do the Head Custodians. The Head Groundskeeper possesses the same level of disciplinary authority as the Head Janitors but has not exercised that authority.

8. The turnover among employees, especially Janitors, has been quite high. There have been approximately 472 terminations for all reasons in the past 6 years. The Employer also has experienced difficulty in recruiting Janitors. Since September of 1994, all recruiting and hiring for positions in the Facilities and Operations Department has been performed by the Employer's personnel office.

Prior to September of 1994, applicants for janitorial positions were screened by the office of the Facilities and Operations Department where they were given basic information about the wages and job. The Head Custodians usually were invited to participate in the next interview with any applicants from the initial screening. As it became increasingly difficult to find applicants for janitorial positions in recent years, it became common for there to be only one applicant for a position. Accordingly, there were only rare occasions when a choice between applicants had to be made. Sometimes, an applicant was hired without any Head Custodian being involved in the interview. However, whenever they were present for an interview, the Head Custodians were always asked their opinions of the applicants.

9. While there is no formal performance evaluation procedure, the Head Custodians are responsible for monitoring the performance of employees during their 90 day probationary period and for recommending whether or not the employee's employment be continued. Head Custodians are also regularly asked if an employee who worked only during either the summer or the school year should be reemployed after the off season. In both instances, the recommendations of the Head Custodians are generally followed.

10. When there is an opening for a Janitor II, the Head Custodian is asked to recommend one of the Janitor I's for that opening. Said position serves as a "lock-up" person at each site and is responsible for the building security at night. The wage rate for Janitor II is \$.70 per hour higher than the wage rate for Janitor I. In the one instance when a Head Custodian requested that a Janitor be transferred to a different building, said request was denied.

11. The Head Custodians, Head Janitors and Head Groundskeeper all have some flexibility to alter the work hours of their crews, although the Head Custodians have the greatest amount of discretion. For example, if an employe is absent, the other crew members can be asked to work additional hours, provided such additional hours do not exceed either the total hours assigned to that building or the legal limits on the hours of work permitted for high school students. There have been occasions when a Head Custodian has approved a request from the Janitors that they be allowed to do their cleaning on a Saturday, rather than on a Friday evening. All of the contested positions are expected to receive approval from Schmidt for overtime work for either themselves or their crews. Some do not always do so.

12. The position of Head Custodian exercises supervisory responsibilities in sufficient combination and degree so as to make the occupants of that position supervisory employes.

13. The positions of Head Janitor and Head Groundskeeper do not exercise supervisory responsibilities in sufficient combination and degree so as to make the occupants of those positions supervisory employes.

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

#### CONCLUSIONS OF LAW

1. The occupants of the position of Head Custodian are supervisors within the meaning of Sec. 111.70(1)(o), Stats., and, therefore, are not municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

2. The occupants of the position of Head Janitor and Head Groundskeeper are not supervisors within the meaning of Sec. 111.70(1)(o), Stats., and, therefore, are municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

3. A collective bargaining unit which includes the CUMTOP employes but excludes the janitorial employes is not an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

4. All regular full-time and all regular part-time custodial, maintenance, grounds and janitorial employes of the West Bend Joint School District No. 1, excluding seasonal, supervisory, managerial and confidential employes is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats., and a question concerning representation exists within said unit.

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

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time custodial, maintenance, grounds and janitorial employes of the West Bend Joint School District No. 1, excluding seasonal, supervisory, managerial and confidential employes, who were employed on August 11, 1995, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employes desire to be represented by the Wisconsin Education Association Council for the purposes of collective bargaining with the Employer named above, or whether such employes desire not to be so represented by said labor organization.

Given under our hands and seal at the City of Madison, Wisconsin,  
this 11th day of August, 1995.

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

WEST BEND SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

WEAC

WEAC asserts that the CUMTOP group of employes, numbering approximately 31, constitutes the most appropriate bargaining unit based on their bargaining history of meet and confer sessions with the Employer which resulted in written documents and on their community of interest which results from their common supervision and their similar wages, hours, working conditions, skills, duties and work sites. In the alternative, WEAC would proceed with an election in a bargaining unit which included all regular full-time and regular part-time employes, excluding seasonal employes who only work during school recesses and summers.

The thirteen employes, whom the Employer characterizes as supervisors, do not exercise supervisory responsibilities in sufficient combination and degree to justify their exclusion from the bargaining unit. Rather, said employes function as lead workers. The Head Custodians have not been involved in the hiring process for some employes and have played only a passive role when present for interviews. Presently, all hiring is done by the Personnel office. The Head Custodians have limited authority and exercise little independent judgment with respect to disciplinary matters. Most of the disciplinary actions consist of oral or written reprimands for minor rule infractions. Even the few situations involving terminations were of a routine and obvious nature which did not require a major personnel decision. Further, given the few number of disciplinary actions, it would be unreasonable to exclude 13 employes as supervisors.

In terms of directing the work force and of assigning work to individual employes, the Head Custodians function as lead workers, rather than as true supervisors. The training of new employes takes only about 15 minutes. The duties performed by the janitorial employes are fairly routine. There is no formal evaluation procedure. There is generally no opportunity to recommend that an employe be promoted. The Head Custodians cannot effectively recommend the transfer of employes to different buildings or shifts. The Head Custodians are required to contact Schmidt for approval of overtime for themselves or any members of their crews. All of the Elementary Head Custodians work on a shift different than the shift worked by the rest of their crew. Even in the high schools, one supervisor would appear to be sufficient, rather than the 3 claimed by the Employer.

The Employer has claimed an excessive number of positions as supervisory considering the number of employees allegedly supervised and the nature of the work involved.

### Employer

The Elementary Head Custodians are fully responsible for assignment of duties to the Janitors; are the only employees who check on the work of the second shift Janitors; are authorized to work one hour per week of overtime to come in on the second shift; have the authority to handle all disciplinary matters relating to Janitors under their supervision, up to and including discharge, and have exercised that authority; have the authority to alter the hours of work of the Janitors; recommend which of the Janitor I's will be promoted to Janitor II; have participated in the interviewing and hiring of Janitors; have the authority to dismiss probationary employees; recommend whether or not seasonal employees will be rehired; allow Janitors to take unpaid vacation during summer months; and, are solely responsible for the training of new Janitors. The wage structure and its history demonstrate that the Elementary Head Custodians are compensated in part for these supervisory responsibilities. Finally, in a prior case involving the Employer, the Commission determined that the Elementary Head Custodians were supervisors.

The other Head Custodians and the Head Groundskeeper have the same authorities, duties and responsibilities as do the Elementary Head Custodians. As a result of the large complement of Janitors, there is a Head Janitor on the second shift at the Badger Middle School and there are two Head Janitors on the second shift at the High Schools. Although Schwinn, the Head Custodian at the Badger Middle School leaves most of the discipline of Janitors on the second shift to Commons, the Head Janitor, he has disciplined some employees. Schwinn was sent to a seminar on how to conduct interviews, after he expressed a lack of confidence in his interviewing skills.

The Head Janitors are supervisors. They possess the same authorities and responsibilities as do the Head Custodians. For example, Commons independently handled a series of progressive disciplinary actions against a Janitor which ultimately contributed to his resignation. The Head Janitors at the high schools take an active role in the discipline of Janitors, since they are the only supervisors working on the same shift with 21 Janitors.

The Employer would object to a bargaining unit which excluded some of the Janitors on the basis that they are students, whether or not they are under the age of 18. Since all of the Janitors occupy regular positions, then they should all be treated the same with respect to bargaining unit eligibility.

## DISCUSSION

### 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 municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

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

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of the 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 the wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.
5. The degree to which the employees in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We

have also used the phrase "community of interest" as a means of determining whether employees 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 employees 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 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/

When we apply these factors to the WEAC interest in a CUMTOP unit which excludes janitorial employees, we find little to support the WEAC position. The janitorial employees share a common purpose with the other custodial employees of maintaining and cleaning District facilities.

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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 employees 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).

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).



They share similar duties and skills, share supervision and have a common work

place. Exclusion of janitorial employees sets up the potential for an additional bargaining unit and additional fragmentation. Only the factor of bargaining history and the resultant distinctions in wages and benefits strongly support the WEAC preference for a CUMTOP only unit.

Given the foregoing, we find a unit which excludes janitorial employees to be inappropriate and have directed the election in the broader alternative unit.

We are persuaded there is no basis to exclude from the unit those employees who are also students. Student status does not in itself preclude an employee from having a community of interest with other unit members. 6/ While there has been a very high turnover among the Janitors, many of whom have been high school students, the positions filled by the high school students are not reserved for such students and are permanent positions. Further, the students perform the same tasks as are performed by Janitors who are not students.

We are willing to accept the parties' stipulation to exclude seasonal employees from the unit as the record reflects a general lack of an expectation of continued employment.

### Supervisors

Section 111.70(1)(o)1, Stats., defines supervisor as:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively 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.

The indicia by which the Commission has consistently judged supervisory status are as follows:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;

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6/ The City of Beloit, Dec. No. 15112-D (WERC, 11/94).



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

In addition, the Commission has historically held that not all of the above-quoted factors need be present, but if the factors appear in sufficient number and degree, the Commission will find an employe to be a supervisor. 8/

### Head Custodians

There is nothing in the record to show that Schmidt performs any regular on-site supervision of the custodial and janitorial staffs at the various buildings. It is clear that some of the Head Custodians routinely consult with Schmidt prior to taking any disciplinary action. In our view, such consultation does not mean that the Head Custodians lack the authority to initiate discipline, but instead, may reflect an insecurity as to independently deciding the proper action to be taken. Further, even in those situations where the Head Custodian has consulted with Schmidt, the disciplinary action form given to the employe usually has been issued by the Head Custodian. The fact that many of the forms consist of oral or written reprimands for infractions of existing rules for which the penalties are either specified or of a standard nature does not negate the fact that discipline did occur.

Janitors who worked only either during the summer or during the school year are placed in a

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7/ See, e.g., Muskego-Norway School District, Dec. No. 10585-A (WERC, 12/91); City of Milwaukee, Dec. No. 6960 (WERC, 12/64).

8/ Taylor County, Dec. No. 27360 (WERC, 8/92).

"hold status" during the off season. Significantly, the Head Custodians are asked if an employee who was on "hold status" should be rehired and their recommendations have been followed consistently. While there is no formal job performance evaluation process, it is also significant to us that Head Custodians effectively decide whether probationary employees should be retained.

When there is a vacancy for a Janitor II, the appropriate Head Custodian is asked to recommend which Janitor I should be promoted to fill the vacancy.

The Head Custodians do assign work to the employees on their crews. However, little independent judgment is required in such assignments, since the work is of a relatively routine nature. Similarly, the training of new employees is of a relatively routine and brief nature. While the Head Custodians have some flexibility to alter the hours of work of the employees on their crews, such alterations are within definite guidelines require little independent judgment and do not increase the labor cost to the employer. Even allowing a crew to work on a Saturday rather than on a Friday evening does not change the number of hours worked nor the rate of pay earned by the employees. In fact, the contested employees have been instructed to get prior approval from Schmidt before either they or their crews work any overtime, with the exception of the standing allowance of one hour per week which the day shift Head Custodians can use either to check on the second shift crews or to train employees on the second shift. The Head Custodians can allow a Janitor to take unpaid vacation during the summer months if in their opinion there is sufficient help to complete the summer cleaning on schedule.

On balance, we are persuaded the Head Custodians possess sufficient indicia of supervisory status to be found to be supervisors. Of particular importance is their substantial disciplinary authority in addition to their significant involvement in the decisions to retain or terminate probationary employees and to "rehire" employees in "hold status." It is also significant that no other District employees are present or available to supervise the employees under the Head Custodians and that inclusion of the Head Custodians would leave Schmidt as the sole supervisor for approximately 100 employees.

#### Head Janitors and Head Groundskeeper

On balance, we are not persuaded the Head Janitors and Head Groundskeeper possess sufficient indicia of supervisory status to be found to be supervisors. In our view, their position descriptions accurately reflect that their supervisory responsibilities are lesser than and subservient to those of the Head Custodians and/or Schmidt.

While Head Janitors have exercised disciplinary authority, we are persuaded that the Head Custodians to whom the Head Janitors report (and Schmidt to whom the Head Groundskeeper reports) will generally make the significant disciplinary decisions. In contrast to the Head Custodians, the record does not establish that these positions play any substantial role in

promotions, the rehire decisions, or the decision to retain or terminate probationary employees.

Their authority to direct and assign the work force is limited and routine. As argued by the District, the pay differential between the head Janitor and Head Custodian and the employees whose work they direct is substantial. However, we are persuaded the differential primarily reflects the CUMTOP status of these various positions (and the skills of the Head Groundskeeper) rather than pay for supervisors. They spend the vast majority of their time performing work unrelated to the direction of co-workers and we are satisfied that they are "leadworkers" supervising work activity rather than supervising employees.

Given the foregoing, we have concluded these employees are not supervisors and thus are eligible to be included in the bargaining unit.

Dated at Madison, Wisconsin, this 11th day of August, 1995.

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