

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

NEW GLARUS EDUCATION ASSOCIATION

Involving Certain Employes of

NEW GLARUS SCHOOL DISTRICT

Case 13

No. 51225 ME-711

Decision No. 28493

Appearances:

Mr. H. Leroy Roberts, South West Education Association, 960 North Washington Street, Platteville, WI 53818-0722, appearing on behalf of the New Glarus Education Association.

Friedman Law Firm, Attorneys at Law, 30 West Mifflin Street, Suite 202, Madison, Wisconsin 53703, by Mr. David R. Friedman, appearing on behalf of the New Glarus School District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

On June 30, 1994, the New Glarus Education Association filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing bargaining unit by including the position of School Psychologist. Hearing on the petition was held on November 14, 1994, in New Glarus, Wisconsin, before Coleen A. Burns, a member of the Commission's staff. Stenographic transcript was made of the hearing and was received on November 23, 1994. Post-hearing briefs were submitted by January 9, 1995. The Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. New Glarus Education Association, hereafter the Association, is a labor organization with its principal offices located at P. O. Box 722, Platteville, Wisconsin 53818-0722.
2. New Glarus School District, hereafter the District, is a municipal employer with its

principal offices located in New Glarus, Wisconsin 53574.

3. The Association is the voluntarily recognized collective bargaining representative for certain employees of the District. The District and the Association are parties to a collective bargaining agreement which by its terms became effective July 1, 1993, and remained in effect through June 30, 1995. This collective bargaining agreement contains the following language:

ARTICLES OF AGREEMENT

WHEREAS, The Board of Education, hereinafter referred to as the Board, of the School District of New Glarus, New Glarus, Wisconsin, hereinafter referred to as the District, may by law negotiate wages, hours, and conditions of employment with a duly elected sole collective bargaining representative of the teachers in its employ.

Whereas, the Board has recognized the New Glarus Education Association, hereinafter referred to as the Association, as the bargaining representative for all professional employees excluding the administrators, substitute teachers and support staff.

If any article or part of this agreement is held to be invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or part should be restrained by such tribunal, the remainder of the agreement shall not be affected thereby and the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or part.

Hereafter all individuals, except those excluded in the recognition clause above, will be referred to as teacher(s).

NOW, THEREFORE, it is agreed between the Board and the Association as follows:

...

Article I, A, of the 1975-76 collective bargaining agreement, the earliest collective bargaining agreement entered into the record, states as follows:

This agreement is entered into between the Board of Education of Joint District No. 1 of New Glarus, Wisconsin and the New Glarus Education Association, herein referred to as the N.G.E.A. This article recognizes the right of the N.G.E.A. bargaining committee to represent the N.G.E.A. in good faith negotiations between the Board of Education and the N.G.E.A. as provided by Section 111.70 of the Statutes of the State of Wisconsin.

Article VI, A, of this agreement, entitled "Negotiation Procedure for 1976-77 salary schedule," states as follows: "The local NGEA shall be recognized as the sole bargaining agent for the New Glarus Faculty." The 1981-83 collective bargaining agreement between the parties contains the following:

Articles of Agreement

WHEREAS, The Board of Education, hereinafter referred to as the Board, of the School District of New Glarus, New Glarus, Wisconsin, hereinafter referred to as the District, may by law negotiate wages, hours, and conditions of employment with a duly elected sole collective bargaining representative of the teachers in its employ; and

WHEREAS, The Board has recognized the New Glarus Education Association, hereinafter referred to as the Association, as the bargaining representative for all professional employees excluding the superintendent, principals, and all substitute teachers.

If any article or part of this agreement is held to be invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or part should be restrained by such tribunal, the remainder of the agreement shall not be affected thereby and the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or part.

Hereafter all individuals, except those excluded in the recognition clause above, will be referred to as teacher(s).

The 1985-88 collective bargaining agreement between the parties contains the following:

Articles of Agreement

WHEREAS, The Board of Education, hereinafter referred to as the Board, of the School District of New Glarus, New Glarus, Wisconsin, hereinafter referred to as the District, may by law negotiate wages, hours, and conditions of employment with a duly elected sole collective bargaining representative of the teachers in its employ; and

WHEREAS, The Board has recognized the New Glarus Education Association, hereinafter referred to as the Association, as the bargaining representative for all professional employees excluding the superintendent, principals, and all substitute teachers.

If any article or part of this agreement is held to be invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or part should be restrained by such tribunal, the remainder of the agreement shall not be affected thereby and the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or part.

Hereafter all individuals, except those excluded in the recognition clause above, will be referred to as teacher(s).

The parties' 1988-91 collective bargaining agreement contains the following:

Articles of Agreement

WHEREAS, The Board of Education, hereinafter referred to as the Board, of the School District of New Glarus, New Glarus, Wisconsin, hereinafter referred to as the District, may by law negotiate wages, hours, and conditions of employment with a duly elected sole collective bargaining representative of the teachers in its employ.

WHEREAS, The Board has recognized the New Glarus Education Association, hereinafter referred to as the Association, as the bargaining representative for all professional employees excluding the administrators, substitute teachers and support staff.

If any article or part of this agreement is held to be invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or part should be restrained by such tribunal, the remainder of the agreement shall not be affected thereby and the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or part.

Hereafter all individuals, except those excluded in the recognition clause above, will be referred to as teacher(s).

By its terms, the 1988-91 agreement was effective July 1, 1988 through June 30, 1991.

4. On June 30, 1994, the Association filed a petition to clarify bargaining unit requesting that the position of School Psychologist, currently occupied by Mary Rhoades, be included in the bargaining unit which the parties have contractually described as "All professional employees, excluding administrators, substitute teachers and support personnel." The District and the Association agree that the position of School Psychologist is occupied by a professional employe within the meaning of the Municipal Employment Relations Act.

5. Peter Etter has been the District Superintendent since 1979. Etter is also the Elementary Principal. Duane Schober is the Grade 7-12 Principal. The District employs approximately 48 teachers. The District has one High School and one Elementary School. The District also rents a facility to house the Early Childhood program.

6. Rhoades has been employed as the District School Psychologist since 1987. Prior to commencing employment with the District, Rhoades had been a School Psychologist for the Sugar River Cluster. The Sugar River Cluster provided Special Education Services to three school districts, i.e., Belleville, New Glarus, and Monticello. The Belleville School District was the fiscal agent for the Sugar River Cluster. Rhoades was not the first School Psychologist to provide services to the District under the auspices of the Sugar River Cluster. Rhoades' current position description states as follows:

SCHOOL PSYCHOLOGIST

JOB DESCRIPTION

The school psychologist shall provide psychological and psychoeducational services to students through direct services and indirectly through consultation with parents and school staff for the

benefit of students.

The school psychologist shall report to the Principal, Superintendent, and the Director of Special Education.

SPECIFIC RESPONSIBILITIES:

Planning and coordinating psychological services. The school psychologist shall plan and manage goals, services, schedules, records and resources of a comprehensive program of school psychological services.

Assessment. The school psychologist shall use psychological and psychoeducational assessment techniques to identify the learning and/or behavioral needs of both EEN and non-EEN students.

The school psychologist shall serve as the local coordinator of the M-Team process, assuming responsibility for case management, program planning, and compliance with due process policies and procedures.

Counseling and intervention. The school psychologist shall contribute to the development, implementation, and evaluation of instructional, counseling, and other intervention procedures that address the psychoeducational needs of individual students or groups of students. Intervention strategies may include both direct services to the students, and consultation with teachers and parents when this consultation addresses student needs. Counseling and intervention services shall be provided to EEN students, referred students subsequently not identified as EEN students, and to non-EEN students.

Program consultation. The school psychologist shall work collaboratively with other district employees to meet district educational goals, assist in the development and implementation of educational and psychoeducational programs, plan and conduct inservice presentations, and conduct research to identify district needs and evaluate educational and psychoeducational programs.

Professional standards. The school psychologist shall deliver services consistent with professional ethical codes, legal statutes, and

policies of the school district.

The school psychologist shall continually utilize professional development opportunities to maintain and update knowledge and skills in school psychology and education.

QUALIFICATIONS:

DPI licensure as a School Psychologist.

Rhoades tests children and makes recommendations to Etter concerning the placement of children, including recommendations as to which child would work best with a particular teacher. District Special Education teachers also make placement recommendations when developing Individual Educational Programs (IEP's). When the District cannot meet the special education needs of a particular student, the District places the student in a program operated by the Monroe School District. The District incurs tuition and transportation costs when it places students in the Monroe program. Rhoades initiates recommendations to place children in the Monroe program. Rhoades' recommendation is subject to approval by Etter and/or Jo Ann Myrick, the Director of the Special Education Department. Special Education teachers employed by the District develop IEP's which contain placement recommendations. With respect to the aforementioned placement decisions, Etter follows the majority recommendation. The decision to use the Monroe program predates Etter's employment with the District.

Rhoades, the District's principals and teachers each prepare a budget which is presented to the budget committee of the District's Board of Education. The budget committee accepts, rejects or makes changes to these budgets. Rhoades' budget allocates monies for testing materials, classroom materials, and convention expenses. Convention expenses are the biggest portion of Rhoades' budget. Rhoades has discretion to attend or not attend conventions. Prior to expending budget monies, Rhoades and the other District employes are expected to obtain a purchase order signed by Etter. On one occasion, Rhoades expended \$493 to replace a testing kit. The \$493 had been earmarked for other purposes. Etter approved the purchase order, but was upset that Rhoades had expended the money prior to receiving a signed purchase order. Etter is the only person who signs purchase orders for the District.

The District and the Belleville School District share Special Education Services under a Sec. 66.30 arrangement. The Belleville School District is the administrative agent of this Sec. 66.30 arrangement. Myrick provides services to the District through the Sec. 66.30 arrangement. Myrick works two days in each district. Flow-through funds are federal monies administered by the State of Wisconsin and are used for special projects in the Special Education Department. Flow-through funds are not used for salaries. Two years ago, the District's share of the flow-through funds was \$24,000, of which approximately \$12,000 was used for a specially equipped van and \$6,000 was used for a machine. One year ago, the money was used for teacher inservice, supplies and materials. Flow-through fund amounts are based upon the number of

students and the expenditure per student. Rhoades and Myrick cooperate in deciding

the manner in which the flow-through funds are expended. Rhoades, however, could not expend flow-through funds without the consent of Myrick. Special Education teachers make recommendations concerning the expenditure of flow-through funds. When Rhoades does not have sufficient money in her budget for special education conventions, she will make a request to use the flow-through funds. Such requests have always been approved by Etter and Myrick. At times, Special Education teachers will contact Rhoades to request flow-through funds. Rhoades forwards these requests to Myrick. Etter has less discretion with flow-through funds than with regular District funds. Rhoades has more discretion with flow-through funds than with regular District funds.

When available, Rhoades sits in on interviews of applicants for Special Education positions. Etter, Myrick, the High School Principal, and a school board member also attend interviews of applicants for Special Education positions. Rhoades asks questions during the hiring interview and offers her opinion as a Psychologist. Following the interviews, the individuals who conducted the interviews discuss the candidates, review the candidates' applications, and reach a consensus on the best candidate for the position. On one occasion, Rhoades was present for a portion of the interview, but was unable to stay for the full interview. If Rhoades were to advise Etter not to hire a particular applicant as a Special Education aide, Etter would ask for an explanation. If the explanation were satisfactory to Etter, he would not hire the aide. On one occasion, Rhoades and Myrick reviewed and selected five applications to be interviewed for the position of Special Education aide. The applications were also reviewed by the Superintendent. Rhoades did not sit in on the interviews for this position. Steven Wehrley, Chief Negotiator for the Association, is a Coach and has made recommendations concerning the hiring of Assistant Coaches. Coaches and Assistant Coaches are paid by the Monticello School District. Coaches have the opportunity to attend coaching clinics and Etter generally approves such requests.

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

CONCLUSIONS OF LAW

1. It is appropriate in the instant circumstances to exercise the Commission's jurisdiction over the Association's unit clarification petition
2. The School Psychologist is a "professional employe" and is not an "administrator" within the meaning of the parties' existing agreement regarding the scope of their bargaining unit.

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

ORDER 1/

The position of School Psychologist is hereby included in the collective bargaining unit represented by the Association.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

Commissioner William K. Strycker did not participate.

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.

(footnote continued on Page 10.)

1/ (footnote continued from Page 9.)

(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.

NEW GLARUS SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

On June 30, 1994, the Association filed a petition to clarify bargaining unit seeking to include the position of School Psychologist in the collective bargaining unit represented by the Association. The District argues that it is not appropriate for the Commission to exercise jurisdiction to clarify the voluntarily recognized unit; that the issue should be determined by a contract interpretation process; and that the position is not appropriately included in the voluntarily recognized bargaining unit because the occupant of the position is an "administrator."

POSITIONS OF THE PARTIES

Association

For at least twenty years, the Association has been the voluntarily recognized exclusive collective bargaining representative of the professional employes of the District. It is undisputed that the employe occupying the position of School Psychologist is a professional employe as defined in Sec. 111.70, Stats., and is required by DPI to have a license.

The position description of the School Psychologist does not contain a reference to administrative duties. For the most part, the duties contained in the job description are identical to those of teachers. The student is instructed, counseled or assisted by the School Psychologist in a manner that closely resembles, or is identical to, the process of instruction used by teachers.

The District's one witness, Superintendent Peter Etter, recognized only two functions as administrative, *i.e.*, dealing with a budget and placing students. Recommending an appropriate educational placement is a professional duty performed by all teachers. The placement recommendations of the School Psychologist are implemented only after review by the Superintendent and, thus, placement is not within the sole discretion of the School Psychologist.

The record demonstrates that there is no difference between the budget preparation duties of teachers and the School Psychologist. As the Superintendent testified at hearing, he is the only one who signs purchase orders. The School Psychologist has little or no discretion to expend District funds.

The District alleges that the School Psychologist has discretion over convention monies. Testimony, however, establishes that coaches also have discretion to attend or not attend coaching

clinics and, thus, have control over the expenditure of convention monies.

The special education flow-through funds are controlled by Jo Ann Myrick and the Special Education "people," which includes Special Education teachers. The Superintendent also has input into decisions involving the use of these funds.

As with other District employes, the School Psychologist is invited to sit in on interviews and make recommendations. The Superintendent does the hiring.

The position of School Psychologist did not exist at the time the Association was formed. The record does not establish that the School Psychologist performs substantially greater administrative duties than other professional employes. The School Psychologist shares a community of interest with other professionals who provide services to the students. The School Psychologist is not an administrator, substitute teacher, or support staff. The School Psychologist is appropriately included in the collective bargaining unit represented by the Association.

District

The Commission has stated that it will not alter the voluntary agreed-upon composition of a bargaining unit over the objection of one of the parties to the agreement unless:

1. The position(s) in dispute did not exist at the time of the agreement; or
2. The position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential, etc.; or
3. The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; or
4. The existing unit is repugnant to the Act.

Since the District objects to the altering of the bargaining unit, it is necessary to consider the four tests.

It is the District's position that each time the parties enter into a new collective bargaining agreement, there is a new recognition of the Association. The position of School Psychologist

existed at the time that the parties entered into their 1993-95 collective bargaining agreements. Thus, the Association has not met the first test.

The issue of whether or not the School Psychologist is an "administrator" does not involve a statutory issue. Thus, the second test is not applicable.

It has not been argued that, in the last seven or eight years of her employment, there have been any changes which materially affect the unit status of the School Psychologist. Thus, the third test is not applicable.

Excluding administrators from the collective bargaining unit is not repugnant to the Act. The Association has not met the four tests and, thus, the petition should be dismissed.

In Milwaukee Board of School Directors, Dec. No. 25143 (WERC, 2/88), the Commission stated that a unit clarification of a voluntarily defined bargaining unit is not a matter of right and addressed the difficulty of seeking the resolution of an essentially contractual problem through the Commission's statutory authority to make unit determinations. The Commission indicated that, where appropriate, the Commission defers disputes regarding the interpretation of contracts granting voluntary recognition to grievance arbitration and that it is not generally appropriate to preempt the contract interpretation forum, unless statutory issues are presented.

In the present case, the Commission is not called upon to determine any statutory issues. Rather, the fact finder would be called upon to interpret the parties intent with respect to the term "administrators."

Although the collective bargaining agreement does not contain a provision for final and binding arbitration, there is a statutory procedure available for interpreting the contract. Since it is preferable to resolve the issue in a contract interpretation forum, the District renounces any technical or procedural objections to the Commission hearing this matter as a prohibited practice complaint.

The School Psychologist is considered an administrator by the Superintendent. She works as a colleague with the High School Principal and the Director of Special Education, both of whom are administrators.

The School Psychologist performs duties associated with administrators employed by the District. The School Psychologist decides the class in which children are placed and, in the process, allocates District funds. The School Psychologist decides which parts of her budget she wishes to use for travel and other purposes. The School Psychologist is an active participant in the District's hiring process for teachers and special education aides.

The unit clarification petition should be dismissed.

DISCUSSION

As to the issue of whether we should even exercise jurisdiction over this dispute, we rely on our holding in Edgerton School District, Dec. No. 18856-A (WERC, 5/90) wherein we held in pertinent part:

As both parties have correctly argued at differing points in this proceeding, nothing in the Municipal Employment Relations Act prevents parties from voluntarily defining the scope of a bargaining unit and thereby agreeing to the inclusion and exclusion of certain positions.

...

In this unit clarification proceeding the District is not seeking to alter the 1981 unit agreement which the parties' have thereafter renewed in their bargaining agreements. Instead, the District asks that we apply the 1981 agreement to the position in dispute. If we were to do so, we would be interpreting the parties (sic) contractual agreement in the context of the factual record, essentially the function which a grievance arbitration could fulfill. The Association questions whether it is appropriate for us to perform this function in the context of a unit clarification proceeding and cites a portion of our decision in Milwaukee Schools wherein we stated:

... the Commission does not generally find it appropriate to preempt the field regarding the interpretation of a contract, or contracts, granting voluntary recognition, unless statutory issues are presented.

As the Milwaukee Schools quote indicates, we do not "preempt the field" when disputes arise between parties as to how their unit agreement should be applied to a disputed position. Such disputes can be resolved through the grievance arbitration process and the Commission will honor the result reached unless said result contravenes the law the Commission administers. However, while we do not "preempt the field", (sic) we are an available forum for resolution of disputes as to the meaning and application of voluntary agreements regarding the scope of a bargaining unit. By making ourselves available for such dispute resolution, we advance the

interests of labor peace which we are statutorily obligated to pursue and also provide the parties with a decision making body which possesses both expertise as to matters of contract interpretation and familiarity with issues of unit placement. Thus, we proceed to a consideration of the merits of dispute. (footnotes omitted)

Based upon the policy interests stated in Edgerton, we are persuaded it is appropriate to exercise our jurisdiction over the instant petition and determine the unit status of the School Psychologist.

The parties define the bargaining unit as "all professional employees excluding the administrators, substitute teachers and support staff." As the parties agree the School Psychologist is a professional employe within the meaning of the Municipal Employment Relations Act, and because there is no evidence the parties intended their contractual use of the word "professional" to differ from the statutory meaning, we are generally persuaded that the School Psychologist falls within the unit unless, as argued by the District: (1) she is an "administrator" as that term is used in the contract; or (2) there is a specific agreement between the parties to exclude her despite her professional status.

Looking first at the "administrator" argument, consideration of the history of the parties' description of their unit persuades us that the School Psychologist is not an "administrator." The 1985-1988 contract described the unit exclusions as "the superintendent, principals and all substitute teachers." The 1988-1991 contract described the unit exclusions as "the administrators, substitute teachers and support staff." There is no evidence in the record as to why the parties changed the contractual language or that they specifically discussed whether the School Psychologist (who became a District employe in 1987) was an "administrator."

From the evolution of the contractual language, we are persuaded the term "administrator" simply replaced the phrase "the superintendent, principals" and that the superintendent and principals are the employes excluded from the unit by the term "administrator." Thus, while the District correctly argues that the School Psychologist has some administrative duties, we do not find those duties to be a persuasive basis for concluding that the School Psychologist is an "administrator" within the meaning of the parties' agreement.

While we are not persuaded the School Psychologist is an "administrator," the parties nonetheless could have agreed to exclude the School Psychologist from the general inclusion of "all professionals" in the unit. If the facts in this case were sufficient to establish such an agreement, the District would prevail. The evidence supporting the existence of such an agreement is limited to the fact that the Association waited from 1987 to 1994 to challenge the

Psychologist's exclusion from the unit. When we balance the passage of time against the absence of any specific discussion of the Psychologist's unit status, 2/ we are ultimately persuaded no exclusion agreement exists.

Thus, we conclude the general inclusion of "professionals" governs this case and the School Psychologist should be included in the 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

Commissioner William K. Strycker did not participate.

2/ See Stevens Point Schools, Dec. No. 7713-A (WERC, 8/89) as an example of the definitive nature of "specific discussions" in the resolution of unit composition disputes.