

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN EDUCATION ASSOCIATION
COUNCIL

Involving Certain Employees of

OCONTO SCHOOL DISTRICT

Case 20
No. 54159 ME-3534
Decision No. 29119

Appearances:

Mr. Charles Garnier, Coordinator, Wisconsin Education Association Council, 550 East Shady Lane, Neenah, Wisconsin 54956, appearing on behalf of the Association.
Godfrey & Kahn, S.C., Attorneys at Law, by Mr. John A. Haase, 333 Main Street, Suite 600, P.O. Box 13067, Green Bay, Wisconsin 54307-3067, appearing on behalf of the District.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Wisconsin Education Association Council filed a petition with the Wisconsin Employment Relations Commission on June 3, 1996, which requested the Commission to conduct an election to determine whether all regular full-time and regular part-time Aides employed by the Oconto School District desire to be represented by the Association for purposes of collective bargaining. When Commission efforts to obtain a Stipulation for Election proved unsuccessful, hearing on the petition was scheduled and conducted on September 25, 1996 at Oconto, Wisconsin before Sharon A. Gallagher, a member of the Commission's staff. A transcript of the proceedings was made and received by October 30, 1996. The parties submitted their initial briefs by November 29, 1996. Although the parties waived the submission of reply briefs at the hearing, the parties thereafter exchanged correspondence, the last of which was received December 16, 1996. The Commission, having considered the evidence and arguments of the parties, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Education Association Council, hereinafter the Association, is a labor organization with offices located at 550 East Shady Lane, Neenah, Wisconsin 54956.
2. The Oconto School District, hereinafter the District, is a municipal employer which operates a school system serving primary and secondary students. The District has its principal offices at 1717 Superior Avenue, Oconto, Wisconsin 54153-2099.

3. On June 3, 1996, the Association filed a petition with the Wisconsin Employment Relations Commission, hereinafter Commission, requesting that the Commission conduct an election to determine whether certain employees of the District wish to be represented by the Association for purposes of collective bargaining. The bargaining unit claimed as appropriate by the Association is described in the petition as follows:

All regular full-time and regular part-time Aides -- including but not limited to instructional aides, clerical aides, library aides, special education aides of the Oconto School District but excluding supervisory, managerial, confidential, professional and all other non-certified and non-professional employees.

The District argues that the above-quoted unit is not an appropriate bargaining unit. Rather, the District urges that an appropriate bargaining unit should be composed of all regular full-time and regular part-time non-professional employees of the District, (i.e. Aides, Secretaries, Custodians and Food Service workers).

4. At all times relevant hereto the School District has had in place a Board Policy Manual which reads in relevant part as follows:

...

CHAPTER VII

SUPPORT STAFF

...

Section 7.02 PROBATIONARY PERIOD (Revised 11-24-86)

- I. New employees shall serve a probationary period of three months with periodic work evaluations made.
- II. The results of the evaluations will determine whether or not the employee is to be retained.

Section 7.03 EMERGENCY LEAVE (Revised 11-24-86)

Emergency leave will be granted to support staff in accordance with the teachers' Master Agreement unless modified by this policy.

Section 7.04 DISMISSAL (Reaffirmed 11-24-86)

- I. Non-instructional personnel may be dismissed for incompetency, neglect of duty, immorality, in-temperance, misconduct, refusal to obey rules

and regulations of the Board and its chief executive officer, and for other reasons involving just cause.

...

Section 7.07 PAY SCALE (Revised 11-24-86)

- I. A limited amount of recognition is to be given for length of service in Employee Category I.
- II. The modified seniority pay situation is to be as per the following schedule:

Period I - First three months, probationary period 6% less than veterans.

Period II - Next nine months
4% less than veterans.

Period III - Next twelve months
2% less than veterans.

Section 708 Employee Categories (Revised 5-15-95)

- I. Full-time - 12 month employees - Category I.
 - a. Custodians
 - b. Bookkeepers
 - c. Secretaries
 - d. Maintenance Supervisor
 - e. Maintenance Assistants
- II. Category II.
 - a. Cooks
- III. Category III.
 - a. Servers
 - b. Teacher Aides
 - c. Custodian Helpers

d. Less than full-time support employees

IV. Category IV.

a. Summer Employees

Section 7.09 JOB DESCRIPTION (Revised 11-24-86)

A job description for each support staff employee in Employee Category I shall be on file in the District Office and shall be available for review by the Board.

Copies of job descriptions shall also be on file with the staff members' principal and supervisor and shall be accessible to the employee.

Section 7.10 BENEFITS (Revised 5-15-95)

I. Category I.

A. Retirement - The district will pay on the same basis and rate as used for teachers.

B. Hospital-Surgical Insurance - The district will pay 90% and the employee 10% of the current premium for single or family coverage if elected by the employee on the district plan.

C. Dental Insurance - The district will pay 90% and the employee 10% of the current premium for single or family coverage if elected by the employee on the district plan.

D. Life Insurance - Each employee is covered unless a waiver of insurance is filed with the district. The district will pay 64% of the premium.

E. Sick Leave - Ten days per year are allowed. Unused days are cumulative to 100.

F. Emergency Leave - Emergency leave will be granted in accordance with the teachers' "Master Agreement" unless modified by Board Policy.

G. Paid Holidays.

1. New Year's Day, Good Friday, Memorial Day, July 4th, Labor Day, Thanksgiving, Friday following

Thanksgiving, Day before Christmas, Christmas.

2. When a Board approved paid holiday falls on a Saturday, the paid day off will be the preceding Friday. When the Board approved paid holiday falls on a Sunday, the paid day off will be on the following Monday.

H. Vacations with Pay.

1. At the end of the first year, one week.
2. At the end of the second year and thereafter, two weeks.
3. At the end of the 10th year and thereafter, three weeks.
4. At the end of the 15th year and thereafter, four weeks.
5. In general, vacations must be taken during the summer months. However, an employee who had more than ten vacation days earned may take vacation at other times with the approval of the superintendent and an employee with less than ten days earned may save some days for use during days when school is closed with the approval of the superintendent. Bookkeepers and the head custodian whose work load is sometimes heavier during the summers may take vacation days during the school year.
6. Secretaries may take vacation days during the school year with the approval of the superintendent.

II. Category II.

- A. Retirement - According to legal requirements.
- B. Life Insurance - Same as Category I.
- C. Sick Leave - 8 days, cumulative to 75.
- D. Emergency Leave - 2 days; death of spouse 5 days; death of parents, children or first relation in-laws will be 3 days per occurrence.
- E. Paid Holidays - Memorial Day, Thanksgiving, Christmas, New Year's Day.

(Note: Employees as of 5-15-95 will be allowed to continue benefits. Those employed less than full-time after that date will not receive Hospital-Surgical Insurance nor Dental Insurance.)

III. Category III.

- A. Retirement - according to legal requirements.
- B. Sick Leave - 8 days, cumulative to 75. This refers to the average day.
- C. Emergency Leave - 2 days.
- D. Paid Holidays - New Year's Day, Memorial Day, Thanksgiving, Christmas.

IV. Straight Time Only.

...

Section 7.11 WORK SCHEDULE (Revised 11-24-86)

Work schedules for support staff shall be set by the supervisor of the individual worker. Work schedules must comply with the needs of the district and legal regulations. Work days shall be 8 hours for the full-time employees. Work weeks shall be 40 hours for full-time employees. All work schedules shall be approved by the Superintendent.

In a memo dated February 10, 1995 (prior to the filing of the instant petition) the following wage and benefit information pertinent to Aides was disseminated by the District:

...

1. Rate of hire is minimum wage or higher. Anything higher is determined by the Board of Education.
2. Probationary period hasn't applied to Aides.
3. Pay increases are determined by the Board of Education annually. No schedule exist (sic).
4. There is no ceiling wage for Aide positions.
5. Aides working more than 600 hours receive retirement on the same basis as teachers. Aides receive no other benefits because they are listed as Category III employee.

5. The following employes of the District in the Office, Custodial, Kitchen and Aide Departments of the District occupy the position listed next to their name:

| <u>Department:</u> | <u>Position:</u> | <u>Facility Where Employed</u> |
|-------------------------|------------------------------------------|--------------------------------|
| <u>OFFICE</u> | | |
| C BRABANT | PRINCIPAL'S SECRETARY | (Washington School) |
| L COSHENET | SECRETARY-CLERK | (Washington School) |
| D JOHNSON | SECRETARY-CLERK/SPECIAL ED. SECRETARY | (Washington School) |
| M LORANG | PURCHASER-SECRETARY | (High School) |
| K RICHTER | COMPUTER SYS COORDINATOR | (High School) |
| C SHALLOW | SECRETARY-CLERK | (Washington School) |
| S STELLMACHER | SECRETARY-CLERK | (High School) |
| B URBANEK | PRINCIPAL'S SECRETARY | (High School) |
| L VANHULLE | BOOKKEEPER | (High School) |
| <u>CUSTODIAL</u> | | |
| R ADAMS | CUSTODIAN III | (High School) |
| S AUGUSTINE | PERM PART-TIME CLEANER | (Washington School) |
| T BENDT | CUSTODIAN III | (High School and |

| | | |
|---------------|----------------------|-------------------------------------|
| B CISAR | CUSTODIAN III | Washington School) |
| K EXFERD | MAINTENANCE PERSON | (Washington School) |
| N MAYNARD | CUSTODIAN-SUPERVISOR | (Washington School) |
| | | (High School and Washington School) |
| R RICHTER | CUSTODIAN II | (Washington School) |
| F WARRICHAJET | MAINTENANCE PERSON | (High School) |
| R WINANS | CUSTODIAN II | (High School) |

KITCHEN

| | | |
|--------------|------------------------|-------------------------------------|
| D BADORA | SERVER | (Washington School) |
| S DEPOUW | SERVER-DRIVER | (High School and Washington School) |
| D LOBERGER | COOK | (Washington School) |
| J OLSEN | COOK | (Washington School) |
| L PECOR | SERVER-HOT LUNCH CLERK | (High School) |
| J SALACINSKI | COOK | (Washington School) |
| S YUDES | COOK | (Washington School) |

AIDES

(SPECIAL EDUCATION) *

| | |
|------------|----------------------|
| S AUBRY | SPECIAL ED PROG AIDE |
| L LATOUR | SPECIAL ED PROG AIDE |
| O MARTIN | SPECIAL ED PROG AIDE |
| J PALUCH | SPECIAL ED PROG AIDE |
| W SPICE | SPECIAL ED PROG AIDE |
| K VIESTENZ | SPECIAL ED PROG AIDE |

AIDES (DISTRICT)

| | | |
|------------|-------------------|---------------------|
| M GILBERT | LIBRARY AIDE | (Washington School) |
| D SHUFELT | OFFICE AIDE | (Washington School) |
| J HORNBLAD | COMPUTER LAB AIDE | (Washington School) |

AIDES (TITLE I)**

| | |
|------------|--------------------------------|
| J DOOLEY | TITLE I AIDE |
| C RETZLAFF | TITLE I AIDE |
| J WEBER | TITLE I AIDE |
| C ZIMA | TITLE I AIDE |
| VACANT | TITLE I AIDE |
| J ALLEN | TITLE I AIDE |
| K SNYDER | TITLE I AIDE |
| L BREKKE | FAMILY INVOLVEMENT COORDINATOR |

*All but one are employed at Washington School

**All are employed at Washington School

6. The District maintains two school buildings: Washington Elementary/Middle

School and its High School. All of the custodial employees report to the Supervisor of Building and Grounds, D. Behling. Custodial employees generally work either 6:00 a.m. to 2:30 p.m. with a one-half hour unpaid lunch or 2:30 p.m. to 11:00 p.m. with a one-half hour unpaid lunch. One part-time cleaner, S. Augustine, works on school days only from 10:00 a.m. to 2:00 p.m. and other Custodian II employees work on essentially two shifts, 3:00 p.m. to 9:30 p.m., with a one-half hour unpaid lunch, and 2:30 p.m. to 11:00 p.m. with a one-half hour unpaid lunch and are responsible mainly for cleaning. The cleaning person at the High School works from 6:45 a.m. to 3:15 p.m. with a one-half hour unpaid lunch, performs housekeeping duties necessary to keep the school building clean, reports when repairs are necessary to maintenance personnel and cleans up after the daily lunch program has been completed.

The six custodial employees are responsible for some housekeeping duties as well as setting up for special events and concerts, removing snow, keeping supplies in proper storage areas, making an inventory of supplies quarterly, and reporting all minor and major repairs to building maintenance personnel. The two maintenance employees are responsible for maintaining the buildings and facilities, general care of lawns, terraces, shrubberies and trees, assisting in setting up for special events concerts, etc., snow removal, and reporting any repairs that need to be made on forms which are provided by the District. All full-time custodial/maintenance/ cleaning personnel receive full benefits (Health, Dental, Life and LTD) as Category I employees.

7. Although the District maintains some job descriptions for support staff employees, none of these job descriptions contain the qualifications for any of the jobs. The qualification for the Aide positions is a high school diploma or equivalent, and where required by DPI, an appropriate license. All Aides have mailboxes located next to those for the teachers in an area adjacent to the teachers' lounges. Secretaries, Custodians and Food Service workers do not have mailboxes at the District.

8. The job description for the six Special Education Program (SEP) Aides reads in relevant part as follows:

...

Primary Function: As outlined in Wisconsin Administrative Code, Chapter PI 11.33. To assist Special Education Instructors and/or individual EEN students.

Qualifications: The individual shall hold a 3 year license as a special educatin (sic) program aide. An individual holding a license to teach in regular or special education shall not be required to obtain a license as a special education program aide.

Responsible to: In the classroom, special education program

aides shall be under the direct supervision of a certified special education teacher. In cases were (sic) special education program aides are not functioning in the classroom, they shall be under the supervision of a director of special education.

- Responsibilities: A. The responsibilities of each special education program aide shall be negotiated between the DPI and the LEP before the position is filled.

SEP Aides are supervised by the SEP Director Richard Hartman. SEP Aides either work with Learning Disabled (LD) and Cognitively Disabled (CD) students or they work with physically handicapped students who may be LD and/or CD. The SEP Aides who work with the physically disabled students have fewer students to assist and are responsible for the physical needs of their students (toileting, eating, etc.) as well as their educational needs. SEP Aides work directly with SEP students to enhance and evaluate their school work. SEP Aides normally work 180 days per year, Monday through Friday from five to seven hours per day. They work with SEP students in the SEP classroom while a SEP Teacher is present and they accompany students to the computer lab where these Aides work closely with the Computer Aide. SEP Aides present verbal evaluations of their students to SEP Teachers. SEP Teachers give Aides instructions and materials for classes from which they make their own lesson plans; SEP Aides do their own typing of student compositions to use as learning tools in their classrooms; they make copies, take and deliver notes and put up bulletin boards for SEP Teachers. Special Education Secretary Johnson also makes copies for SEP Aides.

9. The job description for the Title I Aides (Academic Assistants) at Washington School reads in relevant part as follows:

...

I. Title: Academic Assistant Mission

To work under the supervision of the Title I teachers and with the school staff toward helping students achieve high academic state learning standards, having improved academic achievement and increasing the partnership between home and school.

II. Attitudes and Qualities

- A. An academic Assistant has a genuine concern and respect for children and their families and a desire to help them be successful.

- B. Is enthusiastic, cheerful and exhibits a positive attitude toward other staff, students and parents at all times.
- C. Is discreet when discussing school and students, matters in and outside of school.
- D. Is adaptable and flexible in assignment both in age level of students and academic areas in which they are assigned to work.
- E. Is prompt in following an established schedule or attending meetings and in following requests from supervisors.
- F. Accepts supervision and ideas for improvement.
- G. Works cooperatively with supervisors, Title I teachers, classroom teachers and other staff.
- H. Has the basic skill level required for the position.
- I. Maintains a safe, neat and healthy environment.
- J. Communicates effectively with appropriate staff members, students and parents.
- K. Is loyal to decisions made, policy and procedures established.
- L. Is a problem solver - sees work that needs to be done and takes steps to accomplish the task.
- M. Is clean and neat in dress and grooming.

III. Duties

- A. To work cooperatively under the supervision of Title I teachers, classroom teachers and following an assigned schedule.
- B. To attend in-service workshops when directed or to make requests to attend in order to help meet the job expectations.

- C. Complete any clerical or organizational task assigned by Title I teachers (i.e.) progress reports, stamping of books, moving of equipment.
- D. Serves on Title I committees when assigned.
- E. Assist in the parent involvement program by planning, or attending evening events when assigned.
- F. Supervise children at recesses or before school when assigned.
- G. Fulfill all activities that are assigned by the Title I Director

The actual duties of the Title I Aides vary. One Aide, Duly, normally tutors students both in the classroom with a classroom Teacher present and in separate classes. Duly tutors students who need extra help but who are not eligible for the District's Special Education Program. Title I Aides do their own typing and make copies on the machine set aside for Title I work; they have limited contact with District Office Secretaries, going to the office for copies only when the Title I copy machine is broken. These Aides are supervised by interim Principal Burns who is the Director of the Title I program. These Aides work 180 days per year Monday through Friday for from five hours per day to seven hours per day. Title I Aides assist Teachers in preparing reports on each student served by the Title I program. They prepare and put up bulletin boards, take and deliver notes as necessary and perform typing as needed. Both the SEP Aides and the Title I Aides have very limited contact with Food Service and Custodial/Maintenance/Cleaning employees. All Aides who work seven hours per day have playground duty from three to four times per week. Food Service and Custodial employees and most Secretaries do not put up bulletin boards or perform playground duties. The one exception is Ms. Schufelt, Office Aide, who performs playground supervision duty approximately 25 percent of her work time and performs secretarial/clerical functions the remaining 75 percent of her work time.

10. M. Gilbert has been employed by the District for over five years as the "Library Aide". Her job description as the Washington School Library Media Aide reads in relevant part as follows:

. . .

Reports to library media specialist

Responsibilities

The school IMC support staff's responsibilities can be

categorized as clerical and technical.

Clerical

- *Assuming general secretarial responsibilities
 - typing
 - filing
 - duplicating materials if and when needed
- *Compiling statistics
 - recording circulation and other information when needed
 - assisting with reports
- *Ordering and processing print and nonprint materials
 - assisting in maintaining order files
 - assisting in maintaining consideration files
 - assisting with processing procedures as established by library media specialist

- *Maintaining inventory of and ordering supplies
 - checking supplies
 - assisting in preparing order list
- *Circulating print and nonprint materials
 - assisting with circulation processes
 - shelving materials
 - compiling overdue records
- *Performing other library IMC duties as assigned

Technical

- *Assisting students and staff with location and use of materials and equipment
 - answering directional questions
 - demonstrating proper use of equipment
- *Maintaining library media catalogs
 - adding entries
 - withdrawing entries
- *Performing preventive maintenance on equipment
 - changing lamps
 - simple cleaning
- *Preparing displays
- *Assists in scheduling use of and delivering materials and equipment
 - Assists in coordinating use of building materials and equipment
- *Assisting in the maintenance of the media collection
 - withdrawing items as directed by the library media specialist
 - mending and repairing items
 - assisting with inventory
- *Performing other library IMC duties as assigned

Library Aide Gilbert reports to the Librarian, a certified teacher, but her ultimate supervisor is the Building Principal. Library Aide Gilbert answers the telephone in the library and passes notes as necessary, she types all library card information and student library records onto the library computer, checks books in and out, makes tardy book lists, does copying for the Librarian and supervises student conduct in the library when the Librarian is absent. Gilbert is also assigned to perform playground supervision duties several times per week.

11. The District employs L. Brekke as Family Involvement Aide (FIA) and the job description for that position reads as follows:

- I. Mission
 - To increase the partnership between home and school in order to help students achieve high state academic standards

and improved academic performance by working with the school staff, parents and community members.

II. Attitudes and Qualities

- A. Has a genuine concern and respect for children and their families and a desire to help them be successful.
- B. Is enthusiastic, cheerful and exhibits a positive attitude toward other staff, students and parents at all times.
- C. Is discreet when discussing school and students, matters in and outside of school.
- D. Is adaptable and flexible in assignment both in age level of student and academic areas in which they are assigned to work.
- E. Is prompt in following an established schedule or attending meetings and in following requests from supervisors.
- F. Accepts supervision and ideas for improvement.
- G. Works cooperatively with supervisors, Title 1 teachers, classroom teachers and other staff.
- H. Has the basic skill level required for the position.
- I. Maintains a safe, neat and healthy environment.
- J. Communicates effectively with appropriate staff members, students and parents.
- K. Is loyal to decisions made, policy and procedures established.
- L. Is a problem solver - sees work that needs to be done and takes steps to accomplish the task.
- M. Is clean and neat in dress and grooming.

III. Duties

- A. Coordinate and develop a family involvement needs survey yearly.

- B. Develop and coordinate family activities that have been requested.
- C. Chair and Family Advisory Council.
- D. Order and maintain Family Resource Materials.
- E. Coordinate classroom volunteer programs.
- F. Coordinate family education classes or study groups.
- G. Coordinate family curriculum overview nights.
- H. Make home visits.
- I. Publish a quarterly Family Involvement newsletter.
- J. Develop a parent brochure on the Oconto Title I program.
- K. Publicize Family and Title 1 activities with the news media.
- L. Bring support to all Washington PTO and family activities.
- M. Help with the Read-At-Home program.
- N. Serve on the Oconto Parent Education Task Force.
- O. Perform any other duties as assigned by the Director of Title 1 or Principal.

The FIA position qualification is a high school diploma. The hours worked by the FIA are at 70 percent of a full-time school year schedule. The hours are non-traditional and must be approved by the Title I Director. The FIA performs her own typing and clerical duties, publishing and mailing a family involvement newsletter and brochures and maintaining a mailing list therefor.

12. The District also employs a Computer Lab Aide, Janine Hornblad, for whom no job description exists. Hornblad had previously been employed by the District as a substitute teacher when she was hired as a Computer Aide. When hired as Computer Aide, District representatives told Hornblad that they were looking for someone with a high school diploma who had computer skills and experience and who would work well with children. For the school year 1996, Hornblad was hired pursuant to a separate employment contract on a salary to teach Sixth Grade computer

classes one hour per day. For this duty, Hornblad was required to have teacher certification. For the remainder of her work day (6.5 hours) Hornblad was hired as an hourly-paid Computer Aide on a separate support staff contract. As Computer Aide, Hornblad

works directly with and is directed by classroom Teachers. She prepares lesson plans and instructions for her computer lab sessions with the students of these classroom Teachers. Hornblad's supervisor is Building Principal Burns. Hornblad works in the computer lab (room 11 of Washington School) where there are 30 networked computers with one printer, an LCD panel and a telephone. The computer lab room is down the hall from the Secretaries' work stations which are in the office. The Computer Aide has little contact with Office Secretaries, Food Service and Custodial/Maintenance/Cleaning personnel. The Computer Aide occasionally goes to the office to have Secretaries copy and distribute materials for her and to get materials and work supplies that she needs. The Computer Aide receives calls from Office Secretaries or Teachers on the telephone in her computer lab and she takes and delivers messages as necessary. The Computer Aide types instructions for students, her own lesson plans and the computer lab schedule for less than one-tenth of her work time.

13. Computer System Coordinator Richter, who has offices at both the High School and Washington School, is listed as an Aide on the District's support staff employes list. The job description for that position reads in pertinent part as follows:

...

Reports to: Building Principal

Duties include:

1. Develop on-going staff training in the technology field.
2. Maintain and administrate existing LAN's, including installation administration, new users, back-ups, security, recovery procedures, hardware and software updates.
3. Recommends new computer equipment or swapping existing equipment. Involves end-user needs assessment. Meet with vendors regarding new equipment available: hardware, printers, and software; and obsolescence of existing equipment. Training of end users for LAN use.
4. Troubleshoots existing computer hardware and software problems. Coordinate repairs of computer hardware and software.
5. Performs daily computer operations. Centralize ordering of

computer supplies. File documentation of hardware and software.

6. Monitors hardware, software and network performance. Evaluates capacity and plans accordingly.
7. Assists in evaluating hardware and software maintenance contracts.
8. Performs additional related duties as needed or directed.
9. Report activities to Board each June.

A technical college degree in Computer Science is necessary for this position. Position incumbent Richter works eight hours per day, five days per week for twelve months per year. Richter was present when Computer Aide Hornblad was interviewed for the Computer Aide position. Richter enters all students on the District computer system, and provides information/assistance to the Computer Aide regarding computer problems. The Computer Aide checks with Richter once a day to inquire whether Richter needs assistance.

14. The District employs D. Shufelt as an Office Aide. There is no job description covering her position. Shufelt began working for the District as a playground Aide several years ago. As clerical work in the office increased at Washington School, the District also hired Shufelt to work part-time in the office. As of the 1996 school year, Shufelt was employed for 75 percent of her work time in the office and 25 percent of her work time as a playground Aide. In the office, Shufelt keeps track of student attendance and tardiness data, she answers office telephones, makes copies for District managers, Teachers and Aides, sells lunch tickets and distributes internal mail. Prior to the 1996 school year, Shufelt did some typing in the office. However, in 1996, the Board determined that Shufelt was not a "Secretary" because she could not type 50 to 70 words per minute. At this time, Shufelt ceased performing typing duties for the District.

15. D. Johnson is employed as Special Education Secretary four hours per day, five days per week for eleven months per year. Johnson does not receive Category I benefits. The job description for Johnson's position reads in pertinent part as follows:

...

Primary Function: To see that the Special Education Office is run efficiently and that the Secretary is always of assistance to the Director.

Qualifications: High School Graduate; Experienced Secretary; Receptionist; Typing Skills; Bookkeeping

Knowledge; Computer Knowledge

Responsible to: Director of Special Education

- Responsibilities: A. Experienced Secretary:
1. knowledge of what is necessary to run an efficient office.
 2. Knowledge of how to answer a phone in a business manner.
 3. Confidentiality (knowledge that all file information and conversations are to be kept in the office).
- B. Receptionist Duties:
1. Answer telephone and record messages
 2. Deliver messages to teachers
 3. Schedules appointments
 4. Greet and assist people coming into the office.
 5. Other duties as directed by Director
- C. Clerical Duties:
1. Set up M-team meetings/send out notices
 2. Send copies of reports to parents/others
 3. All typing as directed by the Director
 4. All filing as directed by the Director
 5. Any other clerical duties as deemed essential by the Director

16. There are no approved job descriptions for any of the Secretary positions at the District. Rather, the job descriptions that exist were created several years ago by the incumbents of those jobs, all of whom have left the District's employ. As a general matter, no education qualifications are necessary to hold one of the District's secretarial positions. Successful candidates for such positions must type 50 to 70 words per minute. District Secretaries are supervised by their building Principal, they generally work eight hours per day, twelve months per year; they perform typing and copying duties, and they write, edit, type and mail the Principal's monthly news letters and the staff's weekly news letters. Secretaries receive all benefits of Category I employees.

17. Bookkeeper VanHull processes vouchers, keeps track of expenses, prepares financial reports, handles/prepares invoices, answers office telephones and does typing as needed. Purchaser-Secretary Lorang processes requisitions, types and performs other clerical work and answers telephones in the office. Secretary-Clerk Coshenet performs receptionist duties at Washington School, answers telephones, types and performs lunch counts for the District. Secretarial-Clerk Shallow is assigned to the Guidance Department and performs all secretary/clerical work for that department.

18. The District has historically dealt with all non-professional employes as a single entity when establishing their wages, hours and conditions of employment. However, at a June, 1996 Board meeting, Aides in attendance urged the Board to give Aides a greater wage increase

than was being proposed for Food Service, Secretarial and Custodial personnel. Thereafter, the Board voted to raise Aide wages by a greater percentage than for all other non-professional employes.

Based upon the above and foregoing, the Commission makes and issues the following

CONCLUSION OF LAW

All regular full-time and regular part-time Aides of the Oconto School District, excluding all other non-professional employes of the District, managerial, confidential, supervisory and professional employes, is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a, Stats.

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

ORDER 1/

The petition for election is dismissed.

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
(Continued)

Given under our hands and seal at the City of Madison, Wisconsin,
this 19th day of June, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

I dissent. A. Henry Hempe /s/
A. Henry Hempe, Commissioner

1/ (Continued)
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.

Oconto School District

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Positions of the Parties:

Association

The Association observed that none of the support staff is currently covered by a collective bargaining agreement. The Association argued that based upon an analysis of the record in this case and applying the seven factors normally applied by the Commission in similar cases, the bargaining unit consisting of Aides should be found appropriate. In this regard, the Association noted that such units have been found appropriate by the Commission in the past and the Commission has stated that the unit found appropriate need not necessarily be the most appropriate unit. The Association contended that the fact that the Aides have expressed a desire for organization should be given "considerable weight" by the Commission. The Association also observed that in the past, the Commission has not forced "white collar" and "blue collar" non-professional employees into wall-to-wall units against their wishes. While such wall-to-wall units exist, the Association argued that such units have come about generally through voluntary recognition not through "Commission edict."

The Association urged that the duties and skills of District Aides differ greatly from those of Custodians, Cooks and Secretaries. In this regard, the Association observed that Cooks, Custodians

and Secretaries do not work closely with Teachers or with students in classrooms, labs or library settings in direct furtherance of educational goals as Aides do. The Association noted that some Aides must possess DPI licenses, while Secretaries, Custodians and Cooks do not need such licenses to perform their work for the District. In the Association's view, although the District attempted to blur the line between Aides Shufelt, Hornblad, Brekke, and Gilbert and the Secretaries by pointing to certain clerical/secretarial duties performed by these Aides, the Association asserted that the majority of the work performed by these Aides is consistent with that of the other Aides.

In addition, the Association contended that significant dissimilarities exist in the wages, hours and working conditions of Aides compared to the other District support staff employees. In this regard, the Association noted that Cooks and Aides work only during the school year while most Secretaries and most Custodians work twelve months of the year; that no Aides receive health, dental, life or LTD while all full-time Secretaries and full-time Custodians as well as some Food Service workers receive these benefits; and Secretaries, Custodians and most Food Service employees receive higher hourly rates than do the Aide employees.

The Association observed that no relevant bargaining history exists between the District and its support staff employees except for the different treatment that was granted the Aides in 1996 due to their attempt to negotiate with the Board. The Association asserted that should the Commission direct an election in the unit it has sought, this action would not cause undue fragmentation of bargaining units; that a unit of 16 Aides would be preferable to a unit of 41 employees (9 Secretaries, 7 Cooks, 9 Custodians and 16 Aides) containing white collar employees and Secretaries as well as blue collar Cooks and Custodians; and that no community of interest exists between the Aides and Secretaries, Cooks and Custodians.

The Association also noted that if the Commission directed an election in the Association's proposed unit, the Secretaries could later petition for a separate unit and the District could argue again for a wall-to-wall unit and/or whether Secretaries should be accreted into the Aide unit. The Association asserted that the Commission has not objected in the past to the maintenance of non-professional units consisting of only one classification of employees, and it is not unusual for small Districts to maintain multiple bargaining units. In the Association's view, where, as here, the Secretaries are not interested in being represented, the Commission need not address the question whether a Secretary unit would be viable in the future. The Association observed that although the most appropriate unit might include Aides and Secretaries, a unit of Aides alone would constitute an appropriate unit. To force nine District Secretaries into a unit including sixteen Aides could result in the Secretaries' interests being dominated by the interests of the Aides.

District

The District argued that the unit proposed by the Association must be rejected because it would result in undue fragmentation. In this regard, the District observed that the Commission has found the statutory anti-fragmentation mandate to be the determining factor, especially in cases where the number of employees involved is relatively small. If the Aides were severed from the other employees in this case, the District urged, it might potentially be required to negotiate with three or more small non-professional employee groups which would violate the anti-fragmentation directive of the statute.

Furthermore, the District argued, the Aides share a community of interest with other District support staff employees who all work in support of the educational goals of the District by performing their duties as assigned. In addition, the duties and skills of some of the Aides overlap with those of the Secretaries. In regard to wages, hours and working conditions, the District argued that the non-professional staff generally have the same or similar wages, hours and conditions of employment. The District further noted that the non-professional support staff employees share many of the same supervisors and work location. Finally, the District noted that it traditionally acted at the same time regarding all non-professional support staff employees' wages and benefits and that this bargaining history should support its position in this case.

Discussion:

Section 111.70(1)(b) of the Municipal Employment Relations Act (hereinafter MERA) defines a collective bargaining unit in pertinent part as ". . . a 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, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the municipal employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a collective bargaining unit.

In applying the statute, the Commission has 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 employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.

6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. 2/

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. 3/

2/ Arrowhead United Teachers v. WERC, 116 Wis.2d 580 (1984); Benton School District, Dec. No. 24147 (WERC, 12/86); Boyceville Community School District, Dec. No. 20598 (WERC, 4/83).

3/ 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).

The fragmentation criterion reflects our statutory obligation to "avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal workforce". 4/ 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. 5/

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

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

Based upon long-standing Commission precedent, it is well established that within the unique factual context of each case, not all criteria deserve the same weight 6/ and thus a single criterion or a combination of criteria listed above may be determinative. 7/ Consequently, the Commission gives effect to the aforesaid statutory provision by employing a case-by-case analysis 8/ "to avoid the creation of more bargaining units than is necessary to properly reflect the employee's community of interest." 9/

Applying the foregoing to the facts of this case, we conclude that a unit of Aides is not appropriate under Sec. 111.70(4)(d)2.a., Stats. Therefore, we have dismissed the petition for election.

In reaching this conclusion, we find the factors of fragmentation, community of interest, and bargaining history all point to the inappropriate status of an Aides only unit.

As to fragmentation, Sec. 111.70(4)(d)2.a., Stats. directs us to "whenever possible avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force". Here, the Association seeks a unit of 17 employes from a total non-professional unrepresented work force of 42 employes. Creation of an "Aides only" unit establishes the potential for three additional units (Secretaries, Food Service and Custodial). In the context of the total number of employes in question, the potential for four units constitutes undue

6/ 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).

7/ 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).

8/ Appleton Area School District, Dec. No. 18203 (WERC, 11/80).

9/ Area Board of Vocational, Technical and Adult Education District No. 1, Dec. No. 11901 (WERC, 5/73).

fragmentation.

As to community of interest, the record does not establish that the Aides have a particularly distinct community of interest from other non-professionals. All non-professional employees share the common purpose of supporting the educational mission of the District. Aides share the same general work location and supervision with certain other non-professionals. Aides have the same benefit package as some other non-professionals. Aides work the same number of days as some other non-professionals. Some Aides perform clerical duties as do some other non-professionals. Simply put, when we analyze factors 1 - 5, we do not see a particularly distinct community of interest for Aides. 10/

As to bargaining history, the District has historically dealt with all of the non-professional employees as a single entity when establishing wages, hours and conditions of employment. We acknowledge that as a result of their protests at a Board meeting, the Aides received a larger wage increase than other non-professionals the last time the District established non-professional wages, hours and conditions of employment. However, the bargaining history factor focuses not on commonality of result but rather on the structure of the process by which wages, hours and conditions of employment are established. Thus, the Aides' protest and resultant larger wage increase does not substantially detract from the impact of the bargaining history factor in this case.

10/ The Association has argued that only the Aides have expressed an interest in being represented. If true, their sentiments are irrelevant to the issue before us.

Given all of the foregoing, we have found the Aides unit is not an appropriate unit 11/ for the purpose of collective bargaining. 12/ Thus, we have dismissed the petition.

Dated at Madison, Wisconsin, this 19th day of June, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

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- 11/ The Association cites Marinette School District, Dec. No. 27000 (WERC, 9/91) as a case in which we found an Aides unit appropriate. However, Marinette is distinguishable due to large numbers of employes (58 Aides and 36 other unrepresented non-professional employes), separate bargaining history, and almost no commonality of duties and skills with other employes.
- 12/ Balancing all of the appropriate factors, either a wall-to-wall or a white collar only unit (Aides and Secretaries) would be appropriate units within which Aides could seek representation.

Oconto School District

DISSENTING OPINION OF COMMISSIONER A. HENRY HEMPE

The majority correctly identifies the 7-Factor Test as the appropriate standard in this matter. 13/ It is its application of two of the standards - community of interest and bargaining history - from which I dissent.

In effect, the majority tries to construct a three-legged stool on which to rest its result. Each leg is plainly labeled: the first asserts no distinct community of interest; the second claims an unremarkable bargaining history; the third seeks to interpose "anti-fragmentation." But the stool topples, in my view, doomed by the weakness of its first and second legs. For however sturdy the third leg of anti-fragmentation may be, this stool cannot stand on only one leg.

Community of Interest

Under statutory criteria, teacher aides do not appear to qualify as "professionals." 14/ Yet it seems clear that Oconto teacher and special education aides' close, cooperative working relationships with teachers and other district professional staff members are a natural consequence of the similarity of tasks performed by each group. These tasks relate primarily to teaching and assisting students. No other group of non-professionals has similar tasks.

These close, cooperative relationships are reflected not only by record testimony, but by the supervisory structure in place: teacher aides report to teachers (who report to assistant principals);

13/ "1) Whether the employees in the unit sought share a 'community of interest' distinct from that of other employees; 2) The duties and skills of employees in the unit sought as compared with the duties and skills of other employees; 3) The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees; 4) Whether the employees in the unit sought 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. The phrase 'community of interest' as used in Factor 1 refers to a consideration of whether the employees participate in a shared purpose through their employment. (Citation omitted.) *In our decisions, we also use the phrase 'community of interest' when summarizing our consideration of Factors 2 - 5 above, by which we determine whether employees share similar interests.*" (Citation omitted; emphasis supplied). *Melrose-Mindoro School District*, Dec. No. 27162 (WERC, 2/92).

14/ Sec. 111.70(1)(L), Stats.

special education aides report to special education teachers (who report to the Director of Pupil Services). These chains of command are not shared by other non-professionals employed by the District. 15/

The transcript is also clear that Oconto teacher and special education aides do not function as teacher "lackeys" or "go-fers" in any sense, but spend the lion's share of their work-day in direct contact with Oconto School District students. 16/ The work of other non-professional support staff, while essential, does not deal directly with Oconto students. In short, it appears that the primary work of almost all of the aides is working directly with students in a tutoring/supportive role; it does not appear that other non-professional support staff members have duties remotely resembling this.

Neither are aides paid on the same basis as other non-professionals. Since aides work primarily with students, they are employed only during those portions of the year when students are present. While cooks are also employed on a school year basis, custodians and secretaries work on a twelve-month schedule. 17/ Finally, it appears that all full-time secretaries and custodians along with most of the cooks are eligible for health, dental, life, and limited-term disability insurance; in contrast, no aides are eligible for these benefits. 18/

As to work places, fourteen of the seventeen aides work in classroom settings. Only one (office aide D. Shufelt) works in a school office location with district secretaries. One (library aide M. Gilbert) works in the library; one (computer lab aide J. Hornblad) works in the computer laboratory. No support staff other than aides have been assigned workplaces in the classrooms, library, or computer lab. 19/

15/ Cooks and servers, on the other hand, report to the School Lunch Manager who reports directly to the Superintendent; secretaries report to the assistant principals who report to the principals, who report to the Superintendent; bookkeepers report directly to the Superintendent; custodians and maintenance persons report to the Building and Grounds Supervisor who reports to the principals. Joint Exhibit 7.

16/ Tr., 14-15 (Janine Hornblad); Tr. 34-40 (Jackie Dooley); Tr. 88-90 (Wendy Spice).

17/ However, one custodian and one secretary are employed on a less than twelve-month work year.

18/ Joint Exhibit 1; Association Exhibit 6.

19/ Custodians and maintenance personnel have building maintenance and cleaning responsibilities which appear to include classrooms, labs, and the library. Joint Exhibits 8-17. Presumably these duties are performed when students are not present.

In this light I fail to find significant record support for the majority's conclusion that the aides lack a ". . . particularly distinct community of interest from other non-professionals." The majority appears to consider "community of interest" chiefly from the standpoint of whether the aides are participating in a "shared purpose" with other employees. The majority theorizes that "(a)ll non-professional employees share the common purpose of supporting the educational mission of the District." This is a truism at best - a generalization applicable to virtually every school district employe, professional and non-professional, alike, and so self-evident as scarcely to need to be repeated.

Yet in the context of this case the truism becomes something less than accurate. It is tantamount to saying, in effect, that strawberries and radishes belong in the same food group because they have a similar size, color and support nutritional needs. It apparently induces the majority to render disingenuous or simply inaccurate assessments of Factors 3, 4, and 5. 20/

20/ Factor 3 inquires as to the similarity of wages, hours and working conditions of employees in the unit sought as compared with the duties and skills of other employees. As already explained, the work-year hours and benefits of the aides differ substantially from those of most remaining non-professionals, but the majority finds otherwise. Factor 4 asks whether the employees in the unit sought share separate or common supervision with all other employees. As indicated above, contrary to the finding of the majority, there appears to be an entirely different chain of command for aides than for any other non-professional support staff. Factor 5 measures the degree to which the employees in the unit sought have a common or exclusive workplace. Although the majority sees the aides sharing the same general work location with other support staff, as reported above, only one aide has the same work room as support staff secretaries; all the rest function in a classroom, computer laboratory, or library. Other support staff are not assigned to these rooms except for cleaning and maintenance responsibilities.

Bargaining History

In similar fashion, the majority gives short shrift to the divergent bargaining history of the aides. The majority acknowledges that in the past year the aides made a separate appearance and presentation at a School Board meeting. The majority further agrees that as a direct consequence of this presentation, Board members granted aides a larger wage increase than any other group of non-professionals. 21/ As the majority notes, bargaining history focuses on the structure of the process by which wages, benefits and conditions of employment are adjusted, not on commonality of result. Yet, there is nothing in the record to suggest that any other non-professional group employed at the Oconto School District ever attempted to meet and confer directly with the School Board. The aides did. To its credit, the Board listened. Subsequent Board action benefited the aides, but whether that specific action was taken or not, the aides and the Board had written a new chapter of bargaining history process that demonstrates significant divergence from that of other District non-professionals. While only a first step, it should not be disparaged. It is obviously relevant. It is also clearly divergent from that of other non-professionals.

Anti-Fragmentation

The anti-fragmentation statute (Factor 6 of the Commission's 7 Factor Test) appears to offer the majority the only solid leg of its three-legged stool. Closer review exposes a certain shakiness of even this leg.

Sec. 111.70(4)(d)2.a. provides in relevant part:

2.a. The Commission shall determine the appropriate collective bargaining unit for the purposes of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, *in a particular case*, the municipal employees in the same or several departments, divisions, institutions, crafts, professions *or other occupational groupings* constitute a collective bargaining unit. . . (Emphasis supplied)

Thus it is pellucid and long-established that the statute *permits* the commission to ". . . decide, whether, in a particular case, the municipal employees in the *same . . . occupational groupings* constitute a collective bargaining unit."

21/ The Aides were increased by 9.8%; other non-professionals received only a 3.8% increase.

Presumably, it is on this basis that this Commission has permitted non-professional units consisting of only one classification of employees in a number of school districts of varying sizes.
22/ Presumably, it is on the same basis that the Commission has permitted multiple

22/ As pointed out in the Association's brief, the list includes a number of school districts:

| <u>School District</u> | <u>Unit Type</u> | <u>Decision Number</u> |
|------------------------|------------------|------------------------|
| D.C. Everest | food service | 23660 |
| Franklin | custodians | 10587 |
| Franklin | food service | 25944 |
| Kaukauna | secretaries | 25846 |
| LaCrosse | secretaries | 15710 |

| | | | |
|-----|-----------------|--------------|---------------|
| | LaCrosse | food service | 14653 |
| | LaCrosse | aides | 12384 |
| | LaCrosse | custodians | 6912 |
| | LaCrosse | secretaries | 8994 |
| | Merrill | custodians | 10254 & 22743 |
| | Port Washington | custodians | 10776 |
| | Stevens Point | secretaries | 22498 |
| | Stevens Point | aides | 17057 |
| | Stevens Point | secretaries | 13088 |
| | (continued) | | |
| 22/ | (continued) | | |
| | Stevens Point | bus drivers | 8539 |
| | Stevens Point | custodians | 7713 |
| | Stoughton | aides | 26405 |
| | Stoughton | custodians | 15788 |
| | Sun Prairie | secretaries | 9400 |
| | Sun Prairie | custodians | 8940 |
| | West Bend | secretaries | 16669 |
| | West Bend | custodians | 10296 |

Actually, as sec. 111.70(4)(d)2.a., Stats., directs, the Commission has proceeded on a case-by-case basis depending on the facts of each case. For instance in *Shawano-Gresham School District*, Dec. No. 21265 (WERC, 12/83) the Commission ordered a non-professional bargaining unit consisting of all regular full-time and regular part-time secretaries, clericals, and instructional and clerical aides, but excluding food service, custodial personnel, professional employes, supervisors, managerial and confidential employes (as opposed to a wall-to-wall unit).

non-professional bargaining units in a number small school districts in Wisconsin including Howard Suamico, Marinette, Menasha, Omro, Sparta, Pulaski, and West DePere.

Indeed, this Commission has been clear in its emphasis " . . . that a case-by-case application of the seven traditional criteria for appropriate unit determinations does not produce hard and fast rules of universal applicability. Not all of the criteria necessarily deserve the same weight in every case. Hence, in some cases the size of the unit(s) will take on paramount significance as regards anti-fragmentation, while in other cases one or more criteria may predominate." 23/

23/ *Shawano-Gresham School District*, Dec. No. 21265 (WERC, 12/83); majority: Torosian, Gratz; dissent: Covelli.

Given the weakness of the other two legs of the stool on which the majority lays its case, its "anti-fragmentation" leg is forced to assume a weight it does not easily support. For neither the terms of the statute nor Commission case law 24/ require this Commission to install wall-to-wall bargaining units where ever a unit is requested.

"Although the statute directs that the Commission 'whenever possible' avoid fragmentation of units, it does not specify that there be only one potentially appropriate unit in a given situation. Accordingly, the Commission is not precluded from finding that the Union's proposed bargaining unit, which is of more limited composition than the overall residual unit proposed by the District, is consistent with the statute. (Citation omitted)." 25/

24/ For a fuller discussion of Commission application of the "7 Factor Test," see *Melrose-Mindoro School District*, Dec. No 27162 (WERC, 2/92).

25/ *Marinette School District*, Dec. No. 2700 (WERC, 9/91).

In the past, this Commission ". . . has interpreted sec. 111.70(4)(d)2.a., Stats. to mean that at times there is a need for a mix of bargaining units which afford employes the opportunity to be represented in workable units by organizations of their own choosing which may reasonably be expected to be concerned with the unique interests and aspirations of the employes in said unit. (Citation omitted.) Therefore, the Commission has the obligation to strike a balance between the anti-fragmentation proscription of the statute and the need for ensuring that the unique interests of a given group of employes will not be subordinated to the interest of others in a bargaining group." 26/

Had we done this today, we would have approved the petition for election before us, based on the unique community of interest possessed by the aides (as reflected by assessment of Factors 2 - 5) and the divergent bargaining history. In my opinion, proper application of these factors in this instance overcomes the statutory caution against fragmentation of bargaining units.

Dated at Madison, Wisconsin this 19th day of June, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

26/ *Marinette School District, supra.*