

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WISCONSIN EDUCATION ASSOCIATION COUNCIL**  
Involving Certain Employes of  
**BEAVER DAM SCHOOL DISTRICT**

Case 22  
No. 55168  
ME-3594

**Decision No. 29348**

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Appearances:

**Mr. Armin Blaufuss**, UniServ Director, WinnebagoLand Uniserv, P.O. Box 1195, Fond du Lac, Wisconsin, 54935, on behalf of the Wisconsin Education Association Council.

Davis & Kuelthau, S.C., by **Attorney Susan Love**, 111 East Kilbourn Avenue, Milwaukee, Wisconsin, 53202, on behalf of the Beaver Dam School District.

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND DIRECTION OF ELECTION**

On May 12, 1997, the Wisconsin Education Association Council (Association) filed a petition for election with the Wisconsin Employment Relations Commission, seeking a representation vote in a bargaining unit described as "All regular full-time and regular part-time educational support staff employees of the Beaver Dam Unified School District, excluding all managerial, supervision and confidential employees". The District and Association disagree over whether the bargaining unit sought by the Association is an appropriate unit.

Hearing in the matter was held on October 8 and 9, 1997, in Beaver Dam, Wisconsin, before Examiner Stuart Levitan, a member of the Commission staff. At the hearing, the parties entered into stipulations regarding those District employes who would be excluded from the proposed bargaining unit. Stenographic transcripts of the hearing were available to the parties

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by October 22, 1997. The parties submitted written arguments and reply briefs, the last of which was received on January 13, 1998. In its brief, the District submitted additional documentary evidence, to which the Association objected in its reply brief. We hereby sustain that objection.

The Commission, being fully advised in the premises, now makes and issues the following

**FINDINGS OF FACT**

1. The Wisconsin Education Association Council, herein the Association, is a labor organization with offices at P.O. Box 1195, Fond du Lac, Wisconsin.

2. Beaver Dam Unified School District, herein the District, is a municipal employer with offices at 705 McKinley Street, Beaver Dam, Wisconsin. The District employs approximately 250 professional employes who are represented for the purposes of collective bargaining by the Winnebago Land Uniserv Unit South. All non-professional District employes are not currently represented for the purposes of collective bargaining.

3. The District employs 87 teacher aides and technicians, 26 food service workers, 23 custodial/maintenance employes and 28 secretaries. The Association seeks to include this entire group of 164 educational support personnel in one bargaining unit. The District opposes such a unit, and instead supports four separate bargaining units -- aides, food service, custodians and secretaries.

4. Since at least January 1, 1970, it has been District policy to have unified policies for support staff classification, fringe benefits, leaves and absences, vacations, recruitment, scheduling and overtime. Since at least January, 1980, and as recently as August, 1997, the District has promulgated and published a handbook for the subject educational support personnel, entitled "Support Services Personnel Policies", which it described as "a source of information in regard to the policies as they pertain to established work regulations, working conditions, employee benefits and other general information", but which it maintains does not constitute a contract, either express or implied. The policies which the District promulgated have identical application to all educational support personnel based on the length of their work day and work year. These policies include those relating to: salary policies; overtime; health, life and other insurances; retirement; leaves; and vacations and holidays. These policies also included such other provisions as those relating to: hours of work; transfers; lay off; appeals, and termination of employment. All educational support personnel job descriptions are included in section 541 of a District policy manual.

5. The District's custodial/maintenance employees are 12-month employees charged with maintaining the physical school plant and grounds and providing students with a safe, attractive, clean and efficient place in which to learn, play and develop. The parties have stipulated that the positions of Maintenance Supervisor, Head Custodian III and Head Custodian IV should be excluded from any bargaining unit on the grounds of supervisory authority exercised over the Custodian I's, Custodian II's and Maintenance Helper II's. The custodial/maintenance employees generally work about 45 hours per week for 39 weeks, and 40 hours per week the rest of the year (usually, a time when school is not in session). The custodial/maintenance employees are the only educational support personnel to wear uniforms. The Custodial-Maintenance Salary Guidelines which the District has unilaterally imposed set a range for seven positions, between "regular employment" and "maximum employment"; effective July 1, 1997, the range for the Custodian I was \$8.15 to \$11.78 per hour. The range for a Custodian II was \$8.20 to \$11.85 per hour and the range for the Maintenance Helper II was \$10.00 to \$12.91 per hour.

6. There are 16 secretarial job titles in the 541.2 classifications, nine of which are 10-month positions, five of which are 12-month positions, and two of which are either. All the secretarial positions/job titles report to their Building Principal, except for: three positions in the Library, which report to the Director of Library Services, and three other positions which report to the Director of Pupil Services; Director of Business Services, and Director of Human Resources, respectively. The secretarial positions perform the customary secretarial and clerical duties so that their respective offices can function efficiently and effectively. The secretaries generally do not have continuing, close contact with students or teachers. On July 1, 1997, the District published a document entitled "Salary Guidelines for Secretarial-Clerical/Food Service Positions", which mirrored the structure of the custodial salary structure noted in Fact 5. For the secretarial positions eligible for inclusion in a bargaining unit, the District established pay ranges from \$6.95 to \$11.83 per hour. The parties have stipulated that Administrative Secretaries Behling, Key, Posthuma and Schmidt are confidential employees who should be excluded from any bargaining unit.

7. The 26 food service workers are all 10-month employees, responsible for various aspects of the food service, cafeteria and playground environment. They report to the Director of School Food Service, a contracted position, with whom they meet monthly. Any disciplinary action which the Director undertakes requires the approval of the District's Director of Human Services. Their work-day generally runs from approximately 6:00 a.m. to shortly after lunch. The food service workers interact with custodial staff, but only marginally with other educational support personnel. The salary document noted in Fact 6 set a series of salary ranges for six food service positions from \$6.15 to \$9.61 per hour.

8. The 87 aides are all 10-month employes generally responsible for providing a well-organized, smoothly functioning class environment in which students can take full advantage of the instructional program and available resource materials. They are ultimately responsible to their Building Principal, except that the tutor is primarily responsible to the Charter Team. On July 1, 1997, the District published a salary schedule for aides and tutors based on years of experience. For the 1997-98 school year, the eight-step aide schedule provided for \$7.15 per hour for one year of experience, up to \$9.10 per hour for eight years of experience; the tutor schedule called for \$8.60 per hour for one year of experience and \$10.35 per hour at the top step, for five years of experience.

9. In 1992 and 1993, the District met separately with secretaries and custodial/maintenance employes, respectively, to discuss work issues.

10. In approximately 1995, based on an expression by educational support personnel that they would like some professional development opportunities, the District created a Support Staff Development Committee, with representatives from each of the four employe groups. The Committee organized in-service training for the educational support personnel in the 1996/97 and 1997/98 school years.

11. The District has established a number of other internal committees to address a variety of matters, including a "Vision and Belief Committee" to draft a District-wide mission statement; a committee to address educational support personnel supervision and evaluation, and an Insurance Committee, all of which have had members representing each group of educational support personnel. There has also been a Communications Committee, with membership based on building representation.

12. On or about September 10, 1996, a member of the support staff wrote to the Wisconsin Education Association Council to raise the issue of a possible organizing drive. On October 21, 1996, the President of the Beaver Dam Education Association wrote to certain support staff members inviting them, and other interested parties, to an informational meeting on November 5, 1996. On that date, the District's Director of Human Resources also sent a memo to all educational support personnel regarding employe issues and concerns. On November 13, 1996, the District notified educational support personnel that there would be a series of meetings with the Superintendent to discuss issues which the support staff had previously raised. Starting on December 2, 1996, the Superintendent met with the educational support personnel to conduct a process which culminated in an exercise by which individuals in each group (i.e. aides, secretaries, food service and custodians) were given seven votes and directed to rank the relative importance of approximately 132 separate issues and concerns. Because of the voting process used, by which an individual could cast up to seven votes for a single issue, no meaningful conclusion can be drawn about the degree to which the voting results identified any unique interests and aspirations among the various groups.

13. The parties stipulated that the following positions (incumbents noted parenthetically) should be excluded from the bargaining unit: two Auditorium Technicians (Chris Neuner and Kim Doyle); the Technology Coordinator (Peggy Fredrickson); the Public Information Officer (Annette Kamps); two Health Services Supervisors (Louise Wilson and Susan McMurry); the Project AWARE Coordinator (Sue Scafe); the Academic Support Coordinator (Nancy Doepke) and the Part Time Accountant (vacant). The parties also stipulated that any employee working fewer than 10 hours per week should be excluded from the unit.

As to the Auditorium Technicians, the parties agree that the Technicians lack a sufficient "community of interest" to be included in the unit and the District further asserts the exclusion is appropriate because the employees work less than 10 hours per week.

As to the Technology Coordinator, the parties agree that the basis for the exclusion is the incumbents' supervisory status.

As to the Public Information Officer, the parties agree the Officer lacks a "sufficient community of interest" to be included in the unit.

As to the Health Services Supervisors, the parties agree the basis for the exclusion is the incumbents' supervisory status.

As to the Project AWARE Coordinator and the Academic Support Coordinator, the District asserts the exclusion is warranted by the incumbent's supervisory status while the Association contends exclusion is appropriate because the Coordinators lack sufficient "community of interest" to be included in the unit.

As to the Accountant, the parties agree the basis for the exclusion is the confidential duties of the position.

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

### **CONCLUSION OF LAW**

1. A question concerning representation exists within the following collective bargaining unit deemed appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats:

All regular full-time and regular part-time educational support personnel of the Beaver Dam School District working at least 10 hours per week, excluding supervisors and confidential, managerial, executive, craft and professional employees.

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

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Direction in the voting group consisting of all regular full-time and regular part-time educational support personnel of the Beaver Dam School District working at least 10 hours per week, excluding supervisors and confidential, managerial, executive, craft and professional employes, who were employed on March 31, 1998, except such employes as may prior to the election quit their employ or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by the Wisconsin Education Association Council for the purposes of collective bargaining with the Beaver Dam School District, or whether such employes desire not to be represented by said labor organization.

Given under our hands and seal at the City of Madison, Wisconsin, this 31st day of March, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

**BEAVER DAM SCHOOL DISTRICT**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND DIRECTION OF ELECTION**

**POSITIONS OF THE PARTIES**

**The Association**

In support of its position that the Commission should direct an election in a wall-to-wall unit composed of all regular full-time and part-time educational support personnel, the Association asserts that the educational support personnel all share a strong community of interest in that they have the common purpose of supporting the educational mission and vision of the District; they share a common workplace, with common supervision at their shared worksites; they share a uniform performance assessment process, and common processes for termination and layoff; their employee benefit provisions are set in a unified Support Services Personnel Policies document which applies to all educational support personnel, and which, with the sole exception of wages, provide benefits uniformly to all subject positions, and they historically have received the same total package percent increases and increases in steps and maximums. The employee-employer relationship regarding wages, hours and conditions of employment confirms that a single bargaining unit is appropriate.

Further, the community of interest which the subject personnel share is enhanced by the bargaining history evident in the District. Since at least 1980, the District has established the wages, hours and conditions of employment in its Support Services Personnel Policies document, which has been applied uniformly to all educational support employees with differentiation based on length of work year and/or length of work day. The only exception has been the wage scale, but even here the District grants the same total package increase to all employees and increased the steps, if any, and maximums by the same percent. There is thus not only a uniform established process by also a commonality of result. The District has dealt with the educational support employees in a uniform and consistent manner. Coupled with the existing community of interest, the extensive bargaining history supports the Association's petition for a single bargaining unit representing all educational support personnel.

Further, all educational support personnel share the purpose of supporting the educational program, and the District recognizes all educational support personnel as important members of the educational team. The District Support Services Personnel Policies document confirms this shared purpose by its reference to the need to promote harmony and efficiency "among all employees." The record testimony also established the shared and interrelated responsibilities of educational support personnel.

Given the existing community of interest and bargaining history, the District's proposal to fragment the educational support personnel into four separate bargaining units is not appropriate. The compelling community of interest previously established among all District educational support personnel must be given considerable weight.

The Commission has previously found wall-to-wall units to constitute an appropriate unit for the purposes of collective bargaining. The evidence here presented, particularly of community of interest and bargaining history, supports a determination that one bargaining unit is appropriate.

In its reply brief, the Association further argues that the District's proposed four bargaining units unduly fragments the educational support personnel. There is no pressing need to have four units represent the interests and aspirations of the educational support personnel.

The District attempts to obscure the central issue of whether the unified unit is an appropriate one by citing cases where the Commission permitted single classification units. The District ignores the fact that the Commission generally does not deny a union's request for an appropriate unit as long as there is not undue fragmentation. The cases which the District cited do not support the District's presumption that the Commission has permitted nonprofessional units consisting of only one classification in a number of school districts of varying sizes. Indeed, absent significant evidence that there was not a community of interest, the Commission has uniformly approved such wall-to-wall units as the Association is here proposing.

The Commission is under a statutory mandate to avoid fragmentation whenever possible; the District has not demonstrated that a single unit here is not practicable. While the nature of the work performed by the employees is different, there exists common supervision, a common workplace, common fringe benefits, and common personnel policies.

The District's strategy includes unduly fragmenting the unit into four separate groups in the hope that one or more will vote against representation. The Commission should not condone this.

Further, the timing of the District's survey of employees was done in contemplation of this proceeding, was designed to advance its case, and produced results which are unreliable and unpersuasive.

Despite the District's arguments to the contrary, all educational support personnel share a community of interest. The District's argument about pay equity should be dismissed as irrelevant to this proceeding, and its post-hearing submissions excluded from the hearing record.



The District incorrectly asserts the subject personnel do not share common supervision; the evidence is compelling that they do, with most educational support personnel having daily supervision by their Building Principal. The District's argument would lead to each building having its own bargaining unit.

The District further errs in claiming that there are exclusive work areas within each building which support four different units, when it reluctantly acknowledges that the school and grounds do in fact form a common workplace.

Finally, the educational support personnel are bound together by their common mission of doing the best they can for the students. The District has historically treated the educational support personnel as one inclusive group, and there is no compelling reason to treat them differently for the purposes of collective bargaining.

Because Commission precedent favors the Association's proposed unit where the proposal does not unduly fragment the employees, and because the Association has demonstrated a compelling community of interest among the subject educational support personnel, the Commission should conclude that a single bargaining unit representing all educational support personnel is an appropriate unit and order such an election.

### **The District**

In support of its position that the wall-to-wall unit sought by the Association is not an appropriate unit and that District support personnel should instead be placed in four separate voting groups, the District asserts that while all District employees share the same broad purpose of providing services in furtherance of the District's educational mission, the groups of subject employees each have their own unique purpose which is distinctly different from the others. Aides work with teachers and students in furtherance of the educational process, which maintenance and custodial employees are not directly involved in; while secretaries, custodians and food service workers have some contact with students, it is incidental to the educational process.

The District has undergone a process which has created a wealth of information on the actual interests of the four groups, which indicates that those interests are very diverse and very different for each of the four groups. This data, which ranked the relative importance to each group of 39 different topics, establishes that four separate groups should be certified for the purpose of election. Only by certifying four groups can each group's unique interests be represented; to certify a wall-to-wall unit would deny each of the groups its right to represent its own interests in negotiations with the District, which right they currently enjoy.

Of the subject groups, three are predominantly women, and thus are economically disadvantaged and have significantly different interests related to the value of their work and their family responsibilities than men. If forced into a unit with the predominantly male custodians, the interests of the men and women will be hopelessly divergent. The best way for a female group to pursue gains in their area of special interest without subverting the interests of the male group is to negotiate their wages and benefits independently of the men.

While the teacher aides do not appear to qualify as professionals under the statute, they have a special cooperative working relationship with the teachers, and a particular chain of command, which no other group of non-professionals shares. While other support staff do not deal directly with students, the primary work of almost all the aides is working in a tutoring/supportive role, supervised by teachers. Aides have no community of interest with either custodians, cooks or secretaries, as their duties and skills are totally different. The aides are the largest group; if placed with the other personnel, with whom they have no community of interest, they would subordinate the interests of the others.

While aides report to teachers, food service workers report to the Director of Food Service, who reports to the Superintendent; secretaries report to the Building Principals, who report to the Superintendent; custodians and maintenance workers report to the Head Custodian, who reports to the Superintendent.

Even though the educational support personnel all share one "personnel policy" handbook, their wages and benefits are sufficiently different to support four separate units. They have different work years and work days, which affect their benefits, and have quite different wage structures. While the District generally strives to increase wage and benefit packages for all educational support personnel by the same percentage, the annual increase for employees in each group can be substantially different.

While there is a degree of commonality of workplace, namely the school building and grounds, there is no true commonality or workplace for the four groups other than that, in that each of the four groups works in a different setting.

As reflected in numerous Commission decisions approving units consisting of only one category of school support staff employe, the units sought by the District will not result in undue fragmentation. Neither statutes nor caselaw require the Commission to install wall-to-wall units wherever such a unit is requested.

In reply to the Association, the District further argues that the evidence shows that the subject educational support personnel have their own clear and distinct interests. While some policies are uniform for all employes, the District's compilation of the policies into one document is insufficient to support a conclusion that all groups must be treated as one. Each

group has been treated as a separate group for the discussion of wages, hours and conditions of employment; the Association erred in contending that the various committees have members who report to all support staff personnel. Moreover, the fact that a single employe holds two separate positions does not, by itself, warrant a finding that one unit is appropriate.

The District's survey of employes shows the diversity of interests among the groups. Notwithstanding the Association's misrepresentation, the results of the survey of support staff concerns shows a significant disparity among the interests of the four employe groups. This disparity of interest is sufficient to establish four distinct groups.

Because there are four educational support personnel groups, each of sufficient size for a viable bargaining unit, and each with duties and skills, working conditions, supervision and a history of working with the District, the Commission should find appropriate four separate bargaining units.

### **DISCUSSION**

Our role in disputes such as this is to determine whether the unit sought is appropriate within the meaning of Sec. 111.70(4)(d)2.a. Stats., which provides, in part, as follows:

The commission shall determine the appropriate collective 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 employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a collective bargaining unit.

When making that determination, we consider the facts presented by the parties as measured against the statutory language of Sec. 111.70(4)(d)2.a., Stats. and the following factors:

1. Whether the employes in the unit sought share a "community of interest" distinct from that of other employes.
2. The duties and skills of employes in the unit sought as compared with the duties and skills of other employes.

3. The similarity of wages, hours and working conditions of employes in the units sought as compared to the wages, hours and working conditions of other employes.
4. Whether the employes in the unit sought share separate or common supervision with all other employes.
5. The degree to which the employes in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. 1/

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

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." 3/ The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employes have been unrepresented, an analysis of the development and operation of the employe/employer relationship. 4/

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 5/ and thus a single criterion or a combination of criteria listed above may be determinative. 6/ Consequently, the Commission gives effect to the aforesaid statutory provision by employing a case-by-case analysis 7/ "to avoid the creation of more bargaining units than is necessary to properly reflect the employes' community of interest." 8/

Most importantly, our consideration is not based on whether the unit sought is *the most* appropriate unit, but rather whether it is *an* appropriate unit. 9/

A recent Commission decision is directly on point. In COLBY SCHOOL DISTRICT, DEC. NO. 27502 (WERC, 12/92), the United Food and Commercial Workers filed a petition seeking an election among all full-time and part-time custodians and teaching assistants; an intervening labor organization, General Teamsters Union Local 662, sought a vote among four groups, namely food service, clerical, aides and custodial; and the District and the Wisconsin Education Association Council sought a voting group consisting of "all regular full-time and regular part-time non-professional employes of the District". In explaining why we were ordering an election for "a collective bargaining unit consisting of all regular full-time and regular part-time non-professional employes" of the District, we said:

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

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

In addition, we continue to be mindful of the statutory proscription found in Sec. 111.70(4)(d)2.a. of MERA to "avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force." The Teamsters have not convinced us of the need for four bargaining units for 56 employes (including the assistant head custodian). Forcing the District to negotiate with possibly four bargaining units, potentially with different bargaining representatives, in units as small as nine and ten members, would place a major burden on the District, especially as these employes have a community of interest with each other and the District has provided for similarity in the wages, hours and working conditions of these employes.

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

Here, the employees at issue share a community of interest based on their common purpose of working in support of the District's educational mission. Thus, Factor 1 supports a determination that the unit sought by the Association is an appropriate one.

Consideration of Factors 2-5 produces a mixed picture.

As to Factor 2, there are distinctions in the duties and skills of the employees in the various occupational groupings of support staff employees.

As to Factor 3, existing District policies regarding fringe benefits and working conditions apply equally to all of the support employees. For instance, all employees working more than 17.5 hours are eligible for fringe benefits and the level of benefits is determined by the number of hours worked without regard to whether an employee is an aide, food service worker, maintenance person or secretary. Employees have varying hours and work varying numbers of weeks per year but there are distinctions within employee occupational groupings (i.e. secretaries work either a 10 month or 12 month schedule) and similarities which cut across occupational groupings (i.e. the secretaries who work 12 months per year share that work schedule with the maintenance employees while aides, food service and some secretaries work a 10 month schedule, etc). The wages of food service employees and aides are quite comparable while secretaries and maintenance employees have somewhat higher wages. There are differing wage structures in place for the employees in question (i.e. aides have a salary schedule while secretaries, food service and custodial employees do not).

Turning to Factor 4, supervision has a layer of commonality to the extent the Building Principals and Director of Human Resources have some supervisory role as to all employees. However, the individuals directing and assigning work differ within the occupational groupings.

Looking at Factor 5, the employees share common work sites-the school building within which they work.

Looking at Factors 2-5 as a whole, the mixed picture presented is, on balance, supportive of a conclusion that the wall-to-wall unit is an appropriate unit. We are not persuaded that the interests of the employees in question are so distinct that the unique interests of an occupational grouping cannot be reasonably represented in the collective bargaining process. As noted in Finding of Fact 12, the District's effort to determine to extent to which occupational groupings did or did not have unique interests has been given no weight in this proceeding given the methodology used.

Factor 6 very strongly supports the appropriateness of the unit sought by the Association. A wall-to wall unit gives the maximum deference to the statutory directive in Sec. 111.70(4)(d)2.a., Stats. that we avoid the fragmentation of the workforce when establishing an appropriate bargaining unit.

Factor 7 is also supportive of the appropriateness of the unit sought by the Association. As a general matter, as evidenced by the Support Services Personnel Policies Handbook, the District has dealt with the employes in question as a group without regard to occupational groupings. The District did conduct separate meetings in 1992 and 1993 with the secretaries and maintenance employes, respectively, but the overall history of the relationship between the District and the support staff and the absence of such separate meetings with the food service and aides persuade us that Factor 7 is supportive of a wall-to-wall unit. We discount the significance of the separate meetings the District conducted late in 1996 because the organizing drive which led to this petition was already underway.

Given all of the foregoing, we conclude that the wall-to-wall unit sought by the Association is an appropriate unit and we have directed an election in same.  
Dated at Madison, Wisconsin, this 31st day of March, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**BEAVER DAM SCHOOL DISTRICT**

**DISSENT OF COMMISSIONER A. HENRY HEMPE**

According to the majority, " . . . Factor 1 supports a determination that the unit sought by the Association is an appropriate one."

Reaching this conclusion requires a ploy this Commission has worked before (but rarely identified): definitional expansion. "Shared purpose" is broadly defined as (in this case) "working in support of the District's educational mission;" "community of interest," we are reminded, can be viewed as a "shared purpose;" 10/ therefore, a community of interest is found to exist among all support staff members because all of these employees are engaged in working in support of the District's educational mission. The key to the syllogism, of course, is the expanded definition of "shared purpose" contained in the major premise.

On reflection, this analysis seems less insightful than it is sophistic. Seemingly plausible on its face, under closer scrutiny it is at best meaningless and at worst misleading. While I have not expressed any objection to this gambit in past cases, 11/ I decline to continue that example.

As a practical matter, under our "expanded" shared purpose standard, mere employment, alone, by a common employer becomes sufficient to bestow a "community of interest" on *all* groups of employees, regardless of significant differences in job descriptions and duties, educational requirements, job sites, immediate supervisors, daily and yearly work schedules, rates of pay, or direct student contact. For can it not be safely assumed in *all* cases that *all* employees of an enterprise share the purpose of assisting that enterprise to succeed in carrying out its mission? Clearly, it is in their enlightened self-interest to do so.

Certainly, a "shared purpose" can help create a "community of interest" among even the most diverse of groups. But when the "shared purpose," i.e., "community of interest" is deliberately worded so that it embraces virtually all employees hired by the municipal employer (including management) it loses any meaningful utility as a gauge of appropriate bargaining units.

This is not to say that a "shared purpose" inquiry, properly focused, lacks utility when considering the appropriateness of a proposed bargaining unit. In the instant matter, for instance, it is helpful to reflect on whether any of the employe groups support the same program followed by the custodians to maintain a safe, attractive, and efficient workplace, or share the purpose of the secretaries to perform secretarial and clerical services, or the purpose of the food service personnel to prepare attractive, nutritious meals, or the purpose of the aides and tutors to provide child supervision and individual tutoring to the students. 12/ For, in the words of the Wisconsin Supreme Court in *ARROWHEAD UNITED TEACHERS*, an ultimate question sought



to be answered by this kind of inquiry is whether collective bargaining will be " . . . undermined because of restlessness arising from widely dissimilar interests." 13/ Under the expanded "shared purpose" standard we have used in the past and the majority uses in this matter, that question cannot be satisfactorily answered.

The majority's consideration of Factors 2 - 5 is also flawed, in my view. At best imprecise and at worst strained or contrived, the majority's analysis does not support its conclusion favoring a wall-to-wall unit.

Each of Factors 2- 5, of course, also goes to "community of interest." Although the majority finds consideration of these factors to yield a "mixed picture," what the majority doesn't add is that diversity, not community, of interest is the predominant feature of the mix, a view validated by even a cursory review:

*Factor 2: The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.*

The majority finds "(a)s to Factor 2, there are distinctions in the duties and skills of the employees in the various occupational groupings of support staff employees." This masterful understatement seems roughly akin to saying that "as to classification, there are distinctions between zebras, rhinos, lions, and crocodiles."

For just as the habits and skills of those animals show great diversity, the duties and skills of the 164 employees in the unit sought also vary considerably. The duties of a custodian (maintaining a safe, attractive and efficient physical plant and grounds), for instance, do not resemble those of the secretaries (traditional secretarial/clerical responsibilities); the food service personnel need food-preparation and kitchen equipment maintenance skills not necessary for the teacher aides and tutors; conversely, the one-on-one tutoring or child supervision skills of the aides and tutors (who do not perform any custodial, secretarial, or food service work) are not required of any other occupational group.

*Factor 3: The similarity of wages, hours and working conditions of employees in the unit sought as compared to the wages, hours and working conditions of other employees.*

The majority contends that "(a)s to Factor 3, existing District policies regarding fringe benefits and working conditions apply equally to all of the support employees." It then explains that " . . .all employees working more than 17.5 hours are eligible for fringe benefits and the level of benefits is determined

by the number of hours worked without regard to whether an employe is an aide, food service worker, maintenance person or secretary." It asserts that the wages of food service employes and aides are "quite comparable," (but concedes that the secretaries and maintenance persons have higher wages). It further concedes that there are differing wage structures in place for some of the employes in question, even noting that some have salary schedules and some do not.

The majority's finding that existing District policies regarding fringe benefits and working conditions apply equally to all support employes " . . . without regard to whether an employe is an aide, food service worker, maintenance person or secretary," is both incomplete and disingenuous. For unexplained by the majority is why all of the 23 maintenance employes and a small handful of secretaries are the only 12 month employes of the support staff. The obvious explanation, of course, is that there is a year-round need for maintenance employes and a few secretaries, but the services of the remaining employes are needed only when students are present. Thus, while benefits and the level of benefits are determined by the number of hours worked by an employe, it seems a fair inference that the number of annual hours assigned to an employe is determined by the employe's classification.

The majority also concludes that "(t)he wages of food service employes and aides are quite comparable" (food service wage range: \$6.81 to \$9.61; 8-step aide salary range: \$7.15 to \$9.10). Not noted is the branch of aides known as "tutors" who have a 5-step hourly salary range running from \$8.35 to \$10.35. This, of course, is significantly higher than the food service wage range.

Closer analysis of the various jobs even more fully validates the predominant diversity that emerges with application of Factor 3.

The 23 custodial employes are 12-month employes, are the only district employes to receive uniforms from their employer, and are subject to an hourly salary schedule for seven positions between "regular employment" and "maximum employment." Custodian I hourly salaries range from \$8.15 to \$11.78, Custodian II, \$8.20 to \$11.25, and Maintenance Helper, \$10.00 to \$12.91. None of these ranges have steps. Custodian work-days normally begin at 6:30 a.m. and end at 4:30 p.m. For 39 weeks of the year, custodians work a 45-hour week which includes five hours on Saturday. No other district employes normally work on Saturdays. Custodians receive annual paid vacations and 10 paid holidays. Custodians do not have close, continuing student contact.

The District's 28 secretaries occupy 16 different job titles with hourly pay ranges running from \$6.92 to \$15.60. Like the custodians, the secretarial salary range has no steps. Most appear to have 10 month work schedules, a few have 12 month work schedules, two have either 10 month or 12 month schedules. Their work-day begins shortly before students and teachers arrive and ends at 4:00 or 4:30 p.m., depending on the need. Secretaries do not have close, continuing student contact. 12-month employees have annual paid vacations and 10 paid holidays; 10 month employees have no paid vacation and one paid holiday.

The 26 food service workers are all 10 month employees. Their workday begins at 6:00 a.m. and can run to shortly after lunch. Weekly hours of the various food service positions vary from 11-and-a-quarter to 40 hours. They interact with custodial staff, but infrequently with other support staff. The food service worker salary schedule covers five positions at hourly salaries ranging from \$6.81 to \$9.61. The salary range has no steps. These employees have no paid vacation and one paid holiday. None have any close, continuing contact with students.

The 87 teacher aides and tutors are 10 month employees whose weekly work week is generally 35 hours. The 8-step salary schedule for aides provides for hourly salaries starting at \$7.15 (one-year's experience) to \$9.10. The 5-step salary schedule for tutors runs from \$8.60 at step 1 to \$10.35 at step 5. The aides and tutors work closely with students; indeed, their working day is limited to those hours during which students and teachers are present. These employees receive no annual paid vacation and one paid holiday.

Factor 4: *Whether the employees in the unit sought share separate or common supervision with all other employees.*

The majority finds: ". . . supervision has a layer of commonality to the extent the Building Principals and Director of Human Resources have some supervisory role as to all employes. However, the individuals directing and assigning work differ within the occupational groupings." This is more or less accurate in a very general sense. What the statement does not reveal, however, is the large degree to which the involvement of building principals and the Director of Human Services may vary, as reflected by the record.

At the middle school and the high school a head custodian supervises the work of the custodial crew. At the elementary schools the custodians are supervised by the building principals and the Maintenance Supervisor. The custodians interact with all other staff, including teachers, on a daily basis, and are expected to respond to clean-up requests from these sources.

The secretaries are all directly supervised by the building principals.

The food service workers report to food service supervisors who are, in turn, supervised by a Food Service Director, a "contracted-out" position. Discipline may be imposed by the Director, but only with the concurrence of the District's Director of Human Services.

Aides and tutors are assigned specific work by the classroom teachers to whom they report. Building principals may be involved, but only to the extent of arbitrating the amount of time an aide may be with a particular teacher.

Factor 5: *The degree to which the employes in the unit sought have a common or exclusive workplace.*

As to this factor, the majority finds " . . . the employes share the common work sites - the school building within which they work."

That is true. Employes are assigned duties to be performed within particular school buildings. It is also true that each group is assigned separate work sites within the particular building to which its members are assigned.

Thus, while custodian responsibilities appear to be exercised on a building (and grounds) -wide basis, depending on the particular function being performed, secretaries appear to function only in specific office areas of the building.

Food service workers are limited to the kitchen and cafeteria areas of each building to which they are assigned.

Aides and tutors, on the other hand, discharge their responsibilities only in the presence of the students they are tutoring or supervising. Thus, the work sites of the latter group are necessarily restricted to classrooms, tutorial rooms, media (library) centers, or the playground, and only when a child or children are present.

Based on this overview, it appears obvious that there is a broad diversity of interest among the four groups of employes proposed to be shoe-horned into one bargaining unit. If the proposed wall-to-wall unit is to be approved, I do not believe that the "community of interest" factors (including "shared purpose") can be relied on to provide sufficient justification.

But that, in my view, does not necessarily defeat the proposed bargaining unit. 14/ Wis. Stats. 111.70(4)(d)2.a. directs the Commission 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.*" (Emphasis supplied.) The Commission's Factor 6, of course, is a derivative of that statute. 15/

Thus, consolidating small splinter employe groups into one bargaining unit is permissible, even in the face of a substantial diversity of interest among the groups, where it is "practicable in keeping with the size of the total municipal work force." 16/

This offers no help in the instant matter in which the four employe groups can by no means be described as either small or splintered. But justification of their consolidation into one wall-to-wall bargaining unit could be found both possible and practicable under anti-fragmentation considerations, either in conjunction with or independent of bargaining history 17/, *if there is not created an unreasonable risk the interests of one group will be subordinated to the interests of the others or that one group is large enough to dominate the other three to their detriment.* 18/

The record reflects that this condition is not met in the instant case. As approved by the majority, the proposed bargaining unit consists of 23 custodial employes, 28 secretaries, 26 food service personnel, and 87 aides and tutors. No skills in advanced math are necessary to ascertain that more than one-half of the bargaining unit consists of only one employe group, the aides and tutors. While human conduct is not always quantifiable, it usually includes self-interest as a significant component. Applied to the instant matter, it seems obvious that there is a realistic potential for one employe group to successfully advance its separate interests at the expense of the others. Put another way, the majority's approval of the proposed bargaining unit permits the creation of a realistic threat that the interests of three employe groups will be subordinated to the superior voting strength of the fourth, not only in collective bargaining, but even as to threshold representation issues.

It is principally on this basis that I decline to endorse as appropriate the bargaining unit sought by the petitioner.

In summary, I believe the community of interest the majority professes to find among the four separate groups provides inadequate support for a wall-to-wall unit. Yet notwithstanding the ascendant *diversity* of interest among these groups, in my opinion a wall-to-wall unit (though cumbersome, and probably not ideal) could be *an* acceptable alternative if the

voting strength of one were not so great as to have the realistic potential of overshadowing and dominating the interests of the other three. That, of course, is not the case. Thus, given the current state of the record, I cannot find the proposed bargaining unit an appropriate one under Wis. Stats. 111.70(4)(d)2.a. 19/

Dated at Madison, Wisconsin, this 31st day of March, 1998.

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

**ENDNOTES**

1/ 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).

2/ ARROWHEAD UNITED TEACHERS v. WERC, 116 Wis.2d 580, 592 (1984):

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

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

4/ MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91).

5/ 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).

6/ 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).

7/ APPLETON AREA SCHOOL DISTRICT, DEC. NO. 18203 (WERC, 11/80).

8/ AREA BOARD OF VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT NO. 1, DEC. NO. 11901 (WERC, 5/73).

9/ OCONTO SCHOOL DISTRICT, DEC. NOS. 29295-29296 (WERC, 1/98); MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91).

10/ "Shared purpose" has long been viewed as an alternative component of "community of interests." See, ARROWHEAD UNITED TEACHERS v. WERC, 116 Wis. 2d 580, 592 (1984).

11/ E.g., COLBY SCHOOL DISTRICT, DEC. NO. 27502 (WERC, 5/92) cited by the majority as ". . .directly on point." In that case, the Commission (by unanimous vote in which I participated) combined four employe groups consisting of 10 custodians, 17 food service workers, 9 secretaries, and 20 teacher aides into one wall-to-wall bargaining unit over the objection of an intervening labor organization. We found the same "shared purpose" in that case

as the majority does in this one, i.e., support of the educational mission. The finding was as meaningless in that case as in this one. Nonetheless, the COLBY matter (which involved a total of only 56 employes) was correctly decided on "anti-fragmentation" grounds. Moreover, unlike the instant matter, none of the employe groups in COLBY had the voting potential to control the entire bargaining unit. Given that difference and the far larger bargaining unit proposed herein, I do not find COLBY a persuasive precedent in determining the case before us.

12/ Instructively, the only example of "shared purpose" specifically approved by the Wisconsin Supreme Court has a far narrower focus than the expanded definition we have used in the past and the majority employs in this matter. In *ARROWHEAD UNITED TEACHERS V. WERC*, SUPRA, note 1/, 592-3, the Court approved Commission reasoning in grouping research analysts within the same bargaining unit as social workers and psychologists. The Commission had found: "The research analyst performs research functions and develops statistics to assess the effectiveness of the programs and techniques used by the social workers and psychologists. . .the Research Analyst works in support of the same program engaged in by the Social Workers and the Psychologists." (Cit. omitted).

13/ *ARROWHEAD UNITED TEACHERS V. WERC*, SUPRA, note 1/, 593.

14/ A single criterion or a combination of criteria listed above may be determinative." *JUNEAU COUNTY*, DEC. NO. 27877 (WERC, 11/93).

15/ Factor 6, of course, simply inquires "whether the unit sought will result in undue fragmentation of bargaining units."

16/ See *NORTHEAST WISCONSIN TECHNICAL COLLEGE*, DEC. NO. 11602-A (WERC, 11/95).

17/ Consideration of "bargaining history" in the instant matter produces a mixed bag. Certainly, there is some justification for the majority's finding that the overall history of the relationship between the District and the non-professional support staff is supportive of a wall-to-wall unit. On the other hand, as also noted by the majority, the District did conduct separate meetings with its secretaries and maintenance employes, respectively, as early as 1992 and 1993. That, of course, is not supportive of a wall-to-wall unit. It also appears the District initiated separate meetings with the respective groups in late 1996. The members of the majority "discount" these meetings because the organizing drive that led to the petition in this case had already commenced. Its cynicism may be misplaced, for the majority overlooks two relevant facts: 1) the lengthy involvement of the school district in consensus bargaining with its teachers; 2) inferentially, the record demonstrates the meetings that began in late 1996 with support staff groups were conducted in accordance with "consensus bargaining" principles. Under these circumstances, I am not willing to assail the District's good faith in initiating these meetings.



18/ In the past, the 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 expect 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 interests of others in a bargaining unit." MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91).

19/ The District makes a strong argument for separate bargaining units for each of the four employe groups. Given the diversity of interests among the groups, that alternative appears to pass statutory muster. (The Commission has already approved multiple non-professional bargaining units in a number of small and medium-sized school districts, including Howard-Suamico, Marinette, Menasha, Omro, Sparta, Pulaski, and West DePere.) That is not to say, however, that there are no other alternatives that would also be statutorily "appropriate".

