

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :
 :
 VERNON COUNTY HIGHWAY EMPLOYEES, :
 LOCAL 1527, WCCME, AFSCME, AFL-CIO : Case 1
 : No. 50758 ME-700
 Involving Certain Employes of : Decision No. 6163-C
 :
 VERNON COUNTY (HIGHWAY DEPARTMENT) :
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 In the Matter of the Petition of :
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 VERNON COUNTY SOLID WASTE EMPLOYEES : Case 23
 UNION : No. 49909 ME-3357
 : Decision No. 13805-D
 Involving Certain Employes of :
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 VERNON COUNTY :
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 In the Matter of the Petition of :
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 VERNON COUNTY SOLID WASTE EMPLOYEES : Case 90
 UNION : No. 49904 ME-3356
 : Decision No. 28019-A
 Involving Certain Employes of :
 :
 VERNON COUNTY :
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Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 583 D'Onofrio Drive, Madison, Wisconsin 53719, appearing on behalf of Vernon County Highway Employees Local 1527.
Mr. Leo Nickelotti, Route 1, Box 170, Chaseburg, Wisconsin 54621, and Ms. Jane Severson, P. O. Box 275, Viola, Wisconsin 54664, appearing on behalf of Vernon County Solid Waste Employees Union.
 Klos, Flynn & Papenfuss, Attorneys at Law, by Mr. Jerome J. Klos, 318 Main Street, LaCrosse, Wisconsin 54602-0487, appearing on behalf of the County.

No. 6163-C
 No. 13805-D
 No. 28019-A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On October 4, 1993, the Vernon County Solid Waste Employees Union filed a petition for election requesting the Wisconsin Employment Relations Commission to conduct an election among employees of the Vernon County Solid Waste Operation. On March 30, 1994, Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, filed a petition requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit by accreting the Solid Waste employees of Vernon County into the Highway Department bargaining unit represented by Local 1527. Hearing was held in Viroqua, Wisconsin, on May 16, 1994. The hearing was transcribed and the transcript of the hearing was received on June 29, 1994. The parties did not file post-hearing written argument. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Vernon County, hereafter County, is a municipal employer and has its principal office located in the Vernon County Courthouse, Viroqua, Wisconsin 54665.

2. Vernon County Solid Waste Employees Union, hereinafter the Union, is a labor organization and has its principal office located at Route 1, Chaseburg, Wisconsin 54621.

3. Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, hereinafter AFSCME, is a labor organization and has its principal office located at Route 1, Box 333, Sparta, Wisconsin 54656.

4. On October 4, 1993, the Vernon County Solid Waste Employees Union, by its President, Leo Nickelotti, filed a petition for election with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election among "all regular full-time and part-time employees of the Vernon County Solid Waste Operation performing excavations, back filling, compacting, leaching, dumpster collection, recycling, composting, source separation, clerical and bookkeeping duties and all other non-supervisory employees of the Vernon County Solid Waste Department."

On December 17, 1993, Jane Severson, Secretary of the Vernon County Solid Waste Employees Union, filed a letter with the Wisconsin Employment Relations Commission indicating that the Vernon County Solid Waste Employees Union now wished to have the employees of the Vernon County Solid Waste/Recycling Department accreted into the collective bargaining unit represented by Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO.

On March 30, 1994, Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, filed a petition to clarify bargaining unit with the Wisconsin Employment Relations Commission in which it sought to accrete the Solid Waste employees into the bargaining unit consisting of "all Vernon County Highway Employees except the yearly salaried supervisory employees."

The petition for election filed by the Vernon County Solid Waste Employees Union and the petition to clarify bargaining unit filed by the Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, were consolidated for the purposes of hearing.

The Vernon County Solid Waste Employees Union asks that the employees of the Vernon County Solid Waste/Recycling Department be accreted into the

collective bargaining unit represented by Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO. In the event that the Wisconsin Employment Relations Commission does not consider such an accretion to be appropriate, then the Vernon County Solid Waste Employees Union seeks to represent a collective bargaining unit consisting of employees of the Vernon County Solid Waste/Recycling Department. If the Commission does not accrete the employees in question, Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, does not seek to represent a collective bargaining unit consisting of Vernon County Solid Waste/Recycling Department employees. Vernon County maintains that it is not appropriate to accrete employees of the Vernon County Solid Waste/Recycling Department into the collective bargaining unit represented by Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO and that it is appropriate to have a collective bargaining unit consisting of employees of the Vernon County Solid Waste/Recycling Department.

5. The Solid Waste/Recycling Department of Vernon County has five employees. The County's recycling operation has been in existence for three years and the County's solid waste operation has been in existence for approximately eighteen months. The parties agree that one of these five employees, Gail Frie, is appropriately excluded from any collective bargaining unit on the basis that his position of Solid Waste/Recycling Manager is supervisory and/or managerial. The parties agree that the remaining four employees, Leo Nickelotti, Landfill Specialist/Supervisor a/k/a Operations Technician; Jane Severson, Administrative Bookkeeper/Clerk; Nick Foley, Truck Driver; and Mike Paulsrud, Truck Driver, are municipal employees within the meaning of the Municipal Employment Relations Act (MERA). The position description for the Landfill Specialist/Supervisor, occupied by Nickelotti, is as follows:

PURPOSE OF POSITION:	To assist Solid Waste/Recycling Manager with day to day operations to insure that all activities conform with Vernon County Policy, Wisconsin Department of Natural Resources regulations and Federal EPA codes. To plan daily solid waste and recycling routine and schedule shipment of recyclables collected.
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FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. Essential Functions: Schedule packer truck arrivals to facilitate the baling operation (solid waste, cardboard, tin, plastic, glass, etc.) (15%); Supervise truck drivers and any additional auxiliary workers that may be hired in the future. Provide training to new employees, solid waste haulers and municipal workers of County Program (10%); Operation and maintenance of baler, 6 X 6 baler hauler, multi-purpose loader, fork lift, crusher, granulator and other misc. equipment (50%); Drive truck delivering and picking up roll-off collection boxes (20%); Clean and maintain trucks and roll-off boxes (5%); Keep a daily log of activities (5%); Inspect recyclables to insure that they are properly sorted and acceptable (5%); To help with sorting and cleaning at material recovery facility and operate equipment to load truck for shipment to markets (20%). Maintain a good working relationship with county residents and site attendants.

B. Marginal or non-essential functions: None

PHYSICAL DEMANDS OF THE ESSENTIAL FUNCTIONS:

Over 75% of time is spent talking, hearing and doing low handling. About 50% of time is spent walking, sitting, bending, reaching, using near and far vision, doing low and medium (up to 40 lbs.) lifting, medium amounts of pushing and pulling, and medium amounts of handling. A lesser amount of time, 25%, is spent kneeling, crouching, climbing (using legs, feet and arms), doing high (50 to 80 lbs.) lifting and carrying. In non-routine situations, it is necessary to do medium and very high (over 100 lbs.) carrying and low, high and very high levels of pushing and pulling (over 100 lbs.).

WORKING CONDITIONS WHILE PERFORMING ESSENTIAL FUNCTIONS:

Over 75% of the time, work is performed outside, and hazards include moving vehicles, recycling breakage and dust. About 50% of the time, work is performed in extreme cold and dramatic shifts in temperature. Noise, vibrations and mechanical hazards are factors. Working in extreme heat occurs about 25% of the time. In unusual situations, wet and humid conditions (sic) are present, as are certain hazards - mechanical and chemical. Fumes, gases and odors may also be present in some situations.

EQUIPMENT USED TO PERFORM ESSENTIAL FUNCTIONS:

Equipment includes, but is not limited to, trucks, fork lift, multi-purpose loader, baler, crusher, granulator, mower, power tools, hand tools, scraper, shovel and broom. Breathing apparatus,

hearing and eye protection are necessary in certain situations.

QUALIFICATIONS NEEDED:

A high school diploma is necessary with two years of continued education preferred or two years experience in solid waste management operations. Training or experience in heavy equipment operation is necessary. A commercial drivers license is required. Must be willing to work towards getting a landfill operators license. Basic every day living skills are needed, as well as the ability to understand and follow verbal and written directions. The ability to read, write, add and subtract is required. A mechanical aptitude is also necessary. Knowledge and use of safety equipment and procedures. Good communication skills are very important.

This position description has been prepared to assist in defining job responsibilities, physical demands, working conditions and skills needed. It is not intended to be a complete list of job duties, responsibilities, and/or essential functions. This description is not intended to limit or modify the right of any supervisor to assign, direct and control the work of employees under supervision. The county retains and reserves any or all rights to change, modify, amend, add to or delete from, any section of this document as it deems, in its judgement, (sic) to be proper.

The position description for the Administrative Bookkeeper/Clerk, occupied by Severson, is as follows:

PURPOSE OF POSITION; To assist the manager with day-to-day operations; To help insure compliance with county policy, DNR codes and EPA regulations; To maintain detailed records and prepare reports; To maintain a general ledger system and billing system; To assist manager in organization and implementation of various grant programs.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES

A. Maintain general ledger system and reconcile with County records (25%); Maintain office and billing (25%); Assist manager with daily operation as necessary including baling, sorting, cleaning, etc. (20%); Assist manager with grant programs (10%); Maintain detailed records and prepare reports on incoming waste and outgoing leachate (5); Maintain detailed records and prepare reports on incoming recyclables and their disposition (5); Maintain detailed records and prepare reports on environmental

sampling tests (5%); Provide information to the public regarding operation schedule, procedures, acceptable and unacceptable material (5%).

B. Marginal or non-essential functions: None

PHYSICAL DEMANDS OF THE ESSENTIAL FUNCTIONS:

Over 75% of the time is spent talking, hearing and using near and far vision. About 50% of time is spent sitting, reaching and doing low level lifting. A lesser amount of time, 25%, is spent standing, walking, doing medium lifting (up to 40 lbs.) and fingering. 10% or less time is spent stooping, climbing, bending, twisting, doing low, medium and high level pushing/pulling (up to 100 lbs.), doing low and medium handling and low level fingering. In non-routine situations, it may be necessary to kneel, crouch, run and do high level lifting and carrying.

WORKING CONDITIONS WHILE PERFORMING ESSENTIAL FUNCTIONS:

Over 75% of the time is spent inside. About 25% of the time there is exposure to high noise level, disagreeable odors and dust. 10% or less time is spent in very low or very high temperatures and there may be contact with liquids. Mechanical, electrical and chemical hazards are a possibility. In unusual situations, there may be exposure to dramatic changes in temperature and humid conditions. Fumes, gases and hazardous duty may also be present in some situations.

EQUIPMENT USED TO PERFORM ESSENTIAL FUNCTIONS:

Equipment includes, but is not limited to typewriter, calculator, copy machine, computer, fax machine, truck scale, baler, chipper and forklift. Breathing apparatus, hearing and eye protection are necessary in some situations.

QUALIFICATIONS NEEDED

Two years of post-secondary education or equivalent work experience is required in the area of accountancy. Must be able to operate various types of equipment. Must have the physical ability to work in varied working conditions. Good communication skills are very important, (sic)

This position description has been prepared to assist in defining job responsibilities, physical demands, working conditions and skills needed. It is not intended to be a complete list of job duties, responsibilities and/or essential functions. This

description is not intended to limit of (sic) modify the right of any supervisor to assign, direct and control the work of employees under supervision. The county retains and reserves any or all rights to change, modify, amend, add to or delete from, any section of this document as it deems, in its judgement, (sic) to be proper.

The position description of the Truck Driver, occupied by Paulsrud and Foley, is as follows:

PURPOSE OF POSITION: To drive truck transporting recyclable materials. To assist with Recycling Program. To perform cleaning and maintenance jobs.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. Essential Functions: Drive truck delivering and picking up roll-off collection boxes (50%); Clean and maintain trucks, equipment and roll-off boxes (5%); Keep daily log of activities (10%); Inspect recyclables to insure that they are properly sorted and acceptable (15%); To help with sorting and cleaning at material recovery facility and operate equipment to load trucks for shipment to markets (20%); Maintain a good working relationship with county residents and site attendants.

B. Marginal or non-essential functions: None

PHYSICAL DEMANDS OF THE ESSENTIAL FUNCTIONS:

Over 75% of time is spent talking, hearing and doing low handling. About 50% of time is spent walking, sitting, bending, reaching, using near and far vision, doing low and medium (up to 40 lbs.) lifting, medium amounts of pushing and pulling, and medium amounts of handling. A lesser amount of time, 25%, is spent kneeling, crouching, climbing (using legs, feet and arms), doing high (50 to 80 lbs.) lifting and carrying. In non-routine situations, it is necessary to do medium and very high (over 100 lbs.) carrying and low, high and very high levels of pushing and pulling (over 100 lbs.).

WORKING CONDITIONS WHILE PERFORMING ESSENTIAL FUNCTIONS:

Over 75% of the time, work is performed outside. Hazards include moving vehicles, recyclable breakage and dust. About 50% of the time, work is performed in extreme cold and dramatic shifts in temperature. Noise, vibrations and mechanical hazards are factors. Working in extreme heat occurs about 25% of the time. In unusual situations, wet and humid conditions are present, as are certain hazards - mechanical and chemical. Fumes, gases and odors may also be present in some situations.

EQUIPMENT USED TO PERFORM ESSENTIAL FUNCTION:

Equipment includes, but is not limited to, trucks, fork lift, multi-purpose loader, mower, power tools, hand tools, scraper, shovel and broom. Breathing apparatus, hearing and eye protection are necessary in certain situations.

QUALIFICATIONS NEEDED

A high school diploma is preferred. A commercial drivers license is required and a clean driving record is preferred. Must have the ability to operate varied types of equipment. Must have the physical ability to work in varied working conditions. Must be able to maintain and follow a good safety program. Basic every day living skills are needed, as well as the ability to understand and follow verbal and written directions. The ability to read, write, add and subtract is required. A mechanical aptitude is also necessary. Good communication skills are very important.

This position description has been prepared to assist in defining job responsibilities, physical demands, working conditions and skills needed. It is not intended to be a complete list of job duties, responsibilities and/or essential functions. This

description is not intended to limit or modify the right of any supervisor to assign, direct and control the work of employees under supervision. The county retains and reserves any or all rights to change, modify, amend, add to or delete from, any section of this document as it deems, in its judgement (sic), to be proper.

With the exception of the delivery and pick-up of recyclable materials, which function is primarily the responsibility of the Truck Drivers, the Vernon County Solid Waste/Recycling Department employees perform their work at the Vernon County Landfill which is located about five miles northeast of the County Courthouse. Equipment used by employees of the Vernon County Solid Waste/Recycling Department include the following: forklift, glass crusher, plastic granulator, solid waste baler, 106 horse wheel loader, track loader, recycling trucks, a dump truck, a six wheel drive log truck, and a computerized scale. Frie, Nickelotti, Foley and Paulsrud operate the loader. The majority of the truck driving is done by Paulsrud. The log truck, which is normally driven by Foley, Nickelotti, and Frie, is used to haul bales within the landfill work site.

The Solid Waste/Recycling Department employees generally work a forty hour week between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday. The Solid Waste/Recycling Department employees do not have a fixed work schedule, but rather, flex hours as necessary to perform required tasks. Infrequently, Solid Waste/Recycling Department employees will work on Saturday. Other than refueling equipment, Solid Waste/Recycling Department employees do not perform work at Highway Department shops or offices. All of the Solid Waste/Recycling Department offices are at the landfill site. With the exception of Severson, Vernon County Solid Waste/Recycling Department employees are required to have a commercial drivers license. While the Truck Drivers have primary responsibility for recycling and the Landfill Specialist/Supervisor has primary responsibility for solid waste disposal, all of the employees, including the Administrative Bookkeeper/Clerk, assist each other as necessary to complete required tasks. Employees of the Vernon County Solid Waste/Recycling Department are supervised by Frie and the Solid Waste Committee of County Board. Employees of the Vernon County Solid Waste/Recycling Department are not supervised by any employee of the Highway Department. Employees of the Solid Waste/Recycling Department do not perform the work of Highway Department employees. Highway Department employees do not perform the work of Solid Waste/Recycling Department employees. Nickelotti receives a salary of \$10.42 per hour based upon a forty hour work week and receives fringe benefits which are similar to those received by Highway Department employees. The wages of Paulsrud, Severson, and Foley are in the \$8.00 per hour range.

6. The County and Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO are parties to a collective bargaining agreement which contains the following:

ARTICLE I
Recognition

1.01 The County hereby recognizes the Union as the exclusive bargaining agent for all Vernon County Highway Employees except the yearly salaried supervisory employees for the purpose of bargaining collectively on all matters

pertaining to wages, hours, and working conditions of employment.

Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, represents approximately forty-five employees in the following classifications:

SKILLED

Welder
Mechanic
Foreman-Shop-Crew-Bridge
Drillers & Blasters
Heavy Equipment Operators
Scraper, Dozer, Paver Shovel,
Lo-Boy, Grader Pulvi-mixer,
& Barber Green

SEMI-SKILLED

Assistant Mechanic, Bridge
Workers & Painters, Stone
Mason, Stock Room Clerk,
Shop Clerk & Gas Man

LIGHT EQUIPMENT OPERATORS

Heater, Truck Driver,
Patrolman, Roller,
Distributor, Mud Jack
& End Loader

UTILITY WORKERS

Auxiliary Worker
Student Labor
Watchman

With the exception of the Student Labor, which has an hourly wage rate of \$5.00, the 1993 wage rate of the various Highway Department classifications ranged from \$10.45 to \$10.99 per hour. The Highway Department employees and the Solid Waste/Recycling employees do not interact with each other on a daily basis. The County Highway Department is located approximately four blocks from the County Courthouse. The Highway Department also has outlying shops. Highway Department employees work at the Vernon County Landfill as necessary to haul leachate from the landfill and perform road work. Twice a week, Highway Department employees collect garbage from waysides and parks and deliver this material to the landfill. At the present time, Highway Department employees are constructing a demolition landfill at the Vernon County Landfill. Highway Department employees have a standard work week of five days, Monday through Friday, and a standard work day of 7:00 a.m. to 3:30 p.m., with a one-half hour non-paid lunch period.

7. Vernon County Courthouse and Human Services, Local 2918, AFSCME, AFL-CIO and Vernon County are parties to a collective bargaining agreement which contains the following provision:

ARTICLE I

RECOGNITION

1.01 The COUNTY hereby recognizes the UNION as the exclusive bargaining representative for all employees for the Courthouse and Human Services Department, except the elected officials, supervisors, confidential, managerial or executive employees; for the purposes of conferences and negotiations relating to wages, hours and other conditions of employment.

AFSCME Local 2918 represents approximately forty-five employees in various administrative, custodial, clerical, secretarial and social service positions. The Vernon County Human Services Department is located about a mile from the County Courthouse. Vernon County and Vernon Manor Employees, Local 1667, AFSCME, AFL-CIO, are parties to a collective bargaining agreement which contains the following provision:

ARTICLE I
Recognition

1.01 The County hereby recognizes the Union as the exclusive bargaining agent for all employees of the Manor except the supervisory employees, Administrator's Secretary, and Registered Nurses for the purposes of bargaining on all matters pertaining to wages, hours, and all conditions of employment.

In addition to the above, the County has a collective bargaining agreement with employees in its Sheriff's Department.

On the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. A collective bargaining unit consisting of employees of the Vernon County Solid Waste/Recycling Department and the Vernon County Highway Department is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. The positions of Landfill Specialist/Supervisor, occupied by Leo Nickelotti; Administrative Bookkeeper/Clerk, occupied by Jane Severson; and Truck Driver, occupied by Mike Paulsrud and Nick Foley, are appropriately included in the collective bargaining unit represented by Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, described in Finding of Fact 6.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER 1/

1. The Petition for Election filed by the Vernon County Solid Waste Employees Union on October 4, 1993, is dismissed in its entirety.

1/ See footnote on Pages 13 and 14.

2. The collective bargaining unit represented by Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, is hereby clarified by including the positions of Landfill Specialist/Supervisor, currently occupied by Leo Nickelotti; Administrative Bookkeeper/Clerk, currently occupied by Jane Severson; and Truck Driver, currently occupied by Mike Paulsrud and Nick Foley.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of November, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

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

I concur.

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

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

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

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

period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in

(footnote continued on Page 14)

1/ (footnote continued from Page 13)

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.

VERNON COUNTY

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On October 4, 1993, the Vernon County Solid Waste Employees Union filed a petition for election requesting the Wisconsin Employment Relations Commission to conduct an election among employees of the Vernon County Solid Waste Department. On March 30, 1994, Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, filed a petition requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit by accreting the Solid Waste Department employees of Vernon County into the Highway Department bargaining unit represented by Local 1527. The two petitions were consolidated for purposes of hearing.

POSITIONS OF THE PARTIES

Vernon County Highway Employees, Local 1527, WCCME, AFSCME, AFL-CIO, hereafter AFSCME, argues that the creation of a collective bargaining unit of Solid Waste/Recycling employees would unduly fragment the County's work force in violation of MERA. AFSCME further argues that there is a community of interest between the Solid Waste/Recycling Department employees and the Highway Department employees such that it is appropriate to accrete the Solid Waste/Recycling Department employees into the Highway Department collective bargaining unit represented by AFSCME.

The County argues that it is appropriate to establish a bargaining unit consisting of Solid Waste/Recycling Department employees and denies that the establishment of such a bargaining unit would unduly fragment the County work force. The County maintains that it is not appropriate to accrete the Solid Waste/Recycling Department employees into the Highway Department collective bargaining unit because the two groups of employees do not share a community of interest. While acknowledging that the Solid Waste/Recycling Department employees perform "blue collar" work, the County argues that the Highway Department and the Solid Waste/Recycling Department employees do not share a common work site, working conditions, work functions, or work hours.

The Vernon County Solid Waste Employees Union joins AFSCME in requesting that the Solid Waste/Recycling Department employees be accreted into the Highway Department collective bargaining unit. Should the Commission decide that it is not appropriate to accrete the Solid Waste/Recycling Department employees into the Highway Department collective bargaining unit, then the Vernon County Solid Waste Employees Union requests that the Commission conduct an election among the Solid Waste/Recycling Department employees to determine whether or not these employees desire to be represented by the Vernon County Solid Waste Employees Union for purposes of collective bargaining. AFSCME does not seek to represent a separate collective bargaining unit consisting of Solid Waste/Recycling Department employees.

DISCUSSION

The parties agree that the positions of Administrative Bookkeeper/Clerk, Truck Driver, and Landfill Specialist/Supervisor in the County's Solid Waste/Recycling Department are occupied by municipal employees. 2/ The sole

2/ The parties further agree that the position of Solid Waste/Recycling Manager, occupied by Gail Frie, is not a municipal employe within the

issue to be determined is whether these positions should be accreted into the collective bargaining unit represented by Vernon County Highway Employes, Local 1527, WCCME, AFSCME, AFL-CIO, or whether the Commission should conduct an election among employes in a separate collective bargaining unit consisting of Solid Waste/Recycling Department employes.

Section 111.70(4)(d)2.a., Stats. provides in pertinent part:

The commission shall determine the appropriate bargaining unit for the purposes of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few 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 employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. . . .

When exercising our statutory discretion to determine whether a proposed bargaining unit is appropriate, we consistently consider 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 unit sought as compared to wages, hours and working conditions of other employes.

meaning of the Municipal Employment Relations Act because the position is supervisory and/or managerial.

4. Whether the employes in the unit sought share separate or common supervision with all other employes.
5. Whether the employes in the unit sought have a common workplace with the employes in said desired unit or whether they share a workplace with other employes.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the 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 interest, 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/

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

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. 5/ Although listed as a separate component, under some circumstances, analysis of bargaining history can provide helpful insights as to how the parties, themselves, have viewed the positions in question in the past from the standpoint of both similar interests and shared purpose.

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 employes who also participate in a shared purpose through their employment. (Emphasis supplied.)

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, we believe it is well understood by the parties that within the unique factual context of each case, not all criteria deserve the same weight 6/ and thus a single criterion or a combination of criteria listed above may be determinative. 7/

The issue before us is whether combining the Solid Waste/Recycling Department employes with the Highway Department employes produces an appropriate unit. We conclude such a unit is appropriate and thus have granted the requests of the Solid Waste Employees Union and AFSCME, Local 1527 that the Solid Waste/Recycling Department employes be accreted into the Highway Department unit.

In reaching this conclusion, we acknowledge that application of the seven above-listed criteria to the facts of this case produces a mixed picture. There is a similarity of duties and skills between the two groups of employes and some similarity in wages and fringe benefits. On the other hand, the two groups have separate supervision and generally separate work sites and do not have a clearly defined shared purpose through their employment. The bargaining history criterion is not particularly applicable given the relatively short time the Waste/Recycling employes have existed.

In the context of the mixed picture discussed above, application of the fragmentation criterion is determinative. The addition of four employes to an existing unit of forty-five employes is entirely consistent with the statutory mandate that we "avoid fragmentation by maintaining as few units as practicable . . ." Thus, we conclude the combined unit sought by the two labor organizations is appropriate.

Having reached this conclusion, we acknowledge the County's argument that in Adams County, Dec. No. 27093 (WERC, 11/91) we concluded it was appropriate to give solid waste employes the opportunity to establish their own unit instead of being accreted to an existing unit of highway department employes. However, in Adams County, the bargaining history criterion played a more significant role in our decision because the solid waste employes had existed as separate unrepresented group for six years. Here, the Solid Waste/Recycling Department employes have only existed together as a separate unrepresented group for eighteen months. In addition, the fragmentation criterion was less of a factor because we were being asked to add eight employes to an existing unit of nineteen instead of as in the present case in which four employes are being added to an existing unit of forty-five employes. It is also important that, in Adams County, accretion would have denied a petitioning labor organization of the desired opportunity to represent employes in a separate unit. Here, neither union is seeking to persuade us (at least as a first preference) that they must be given that opportunity. Thus, unlike Adams County, no labor organization (and thus no employe) is being deprived of an opportunity to select or reject union representation.

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).

Given all of the foregoing, we have granted the accretion request of the two unions.

Dated at Madison, Wisconsin, this 9th day of November, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/

Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

CONCURRING OPINION OF CHAIRPERSON A. HENRY HEMPE

Contrary to the view of the majority, I am not persuaded that there exists any significant material differences between the facts of the instant matter and those of Adams County, Dec. No. 27093 (WERC, 11/91). I am, however, pleased to join the majority in reaching a unanimous result herein -- a result I perceive as a prudent retreat from the more subjective standards it had erected in Adams County.

As the dissenter in Adams County, I had suggested the most appropriate remedy there was an election among the landfill employes on the sole issue of whether they wished to be accreted into the existing Highway Department bargaining unit or remain unrepresented. That would be appropriate in this matter, as well, in my view, were it not for the fact that the Solid Waste employes have already expressed a strong preference for accretion through their interim Solid Waste Employees Union. 8/ To require an election under this circumstance would be to require performance of an idle, meaningless act which the law should not countenance.

Dated at Madison, Wisconsin, this 9th day of November, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

8/ Letter dated December 15, 1993, over signature of Jane Severson, Secretary, Vernon County Solid Waste Employees Union.