

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MILWAUKEE DISTRICT COUNCIL 48
& LOCAL 366, AFSCME, AFL-CIO
Involving Certain Employees of
MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT

Case 1
No. 37444 ME-113
Decision No. 6964-A

Appearances:

- Mr. Alvin R. Ugent, Podell, Ugent & Cross, S.C., Attorneys at Law, Suite 315, 207 East Michigan Street, Milwaukee, Wisconsin 53202-4905, appearing on behalf of Milwaukee District Council 48 and Local 366, AFSCME, AFL-CIO.
- Mr. Howard N. Myers, Shneidman, Myers, Dowling & Blumenfield, Attorneys at Law, P.O. Box 442, Milwaukee, Wisconsin 53201-442, appearing on behalf of International Union of Operating Engineers, Local 317.
- Mr. William K. Strycker, Labor Relations Manager, Milwaukee Metropolitan Sewerage District, 735 North Water Street, Milwaukee, Wisconsin 53202-4151, appearing on behalf of Milwaukee Metropolitan Sewerage District.

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

Milwaukee District Council 48 & Local 366, AFSCME, AFL-CIO, having, on August 13, 1986, filed a petition requesting the Wisconsin Employment Relations Commission (the Commission) to clarify, pursuant to the Municipal Employment Relations Act, a bargaining unit of municipal employees in the employ of the Milwaukee Metropolitan Sewerage District; and hearing on the matter having been held on November 13, 1986, and on January 26, 1987, in Milwaukee, Wisconsin, before Richard B. McLaughlin, an Examiner on the Commission's staff; and International Union of Operating Engineers, Local 317, having, at the commencement of the first day of hearing, been permitted to intervene in the matter as the collective bargaining representative of certain employees of the Milwaukee Metropolitan Sewerage District; and a transcript of each day of hearing having been prepared and submitted to the Commission by March 5, 1987; and the parties having either filed, or waived the filing of, a brief by April 7, 1987; and the Commission 1/ having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Milwaukee District Council 48 & Local 366, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization which maintains its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.
2. That International Union of Operating Engineers, Local 317, hereinafter referred to as Local 317, is a labor organization which maintains its offices at 3152 South 27th Street, Milwaukee, Wisconsin 53215.
3. That Milwaukee Metropolitan Sewerage District, hereinafter referred to as the District, is a municipal employer which maintains its offices at 735 North Water Street, Milwaukee, Wisconsin 53202-4151; that the District maintains a number of facilities necessary to process sewerage for the metropolitan Milwaukee area; that among these facilities are two separate waste water treatment plants known as the Jones Island and the South Shore plants; that each of these plants includes a power house by which at least part of the power necessary to the operation of the plants is supplied; that the District maintains a building located at 13th and College in Milwaukee which is known as a field maintenance facility; and that the facility at 13th and College is geographically separate from the Jones Island and South Shore plants.

1/ Chairman Stephen Schoenfeld recused himself in this case at the request of one of the parties because of his efforts to mediate a resolution of the issue herein while a member of the Commission's staff.

4. That the District is a party to separate collective bargaining agreements with AFSCME and with Local 317; that the recognition clause of each of these agreements is set forth as Part II, A, and reads, in relevant part, as follows:

The District hereby recognizes the Union as the exclusive collective bargaining agent for the appropriate certified bargaining units, and as the certificated representative for those employees in these bargaining units occupying the classifications as defined in the appropriate "Certifications of Representatives" promulgated by the Wisconsin Employment Relations Commission.

that in Sewerage Commission of the City of Milwaukee, Case I, No. 8598, ME-8, Decision No. 6964, issued on April 2, 1965, the Commission certified AFSCME as the exclusive collective bargaining representative for the bargaining unit described thus:

all regular full-time and regular part-time employees of the Sewerage Commission of the City of Milwaukee employed in the following departments; Administration and Main Office; Drafting and Design; Engineering Construction and Maintenance; Plant Laboratory and Research; Plant Office and Plant Supervision; Plant Operation and Maintenance and Shipping; but excluding employees employed in the Machine Shop, Power Plant and Building Trades, and further excluding craft, supervisors, confidential employees and executives.

that in Sewerage Commission of the City of Milwaukee, Case II, No. 8630, ME-20, Decision No. 6965, issued on April 2, 1965, the Commission certified Local 317 as the exclusive collective bargaining representative for the bargaining unit described thus:

all regular full-time and regular part-time employees of the Sewerage Commission of the City of Milwaukee employed as Power Plant employees, excluding all other employees, supervisors, confidential employees, and executives.

that subsequent to these decisions, the parties voluntarily extended the certifications to similar departments in the District's South Shore facility; and that the District, AFSCME and Local 317 were parties to a unit clarification proceeding captioned as Milwaukee Sewerage Commission Case XXXVI, No. 17801, ME-1047, Decision No. 13597, in which the Commission ordered the classifications of Control Technician and Control Technician Trainee to be included in the unit represented by Local 317.

5. That on August 13, 1986, AFSCME filed the instant petition for unit clarification seeking to have the classification of Collection Systems Operator, hereinafter referred to as the CSO classification, included in the bargaining unit of which it is the exclusive representative; that Local 317 has intervened in the matter to contend that the CSO classification should be included in the bargaining unit of which it is the exclusive bargaining representative; that the District has taken no position on which unit the CSO classification should be included within; that the CSO classification is a new classification within the District; that there are openings for five employees within the CSO classification; that the District has filled those openings on a limited term basis; that the District, AFSCME and Local 317 have entered various agreements on a method to fill the openings in the CSO classification on a permanent basis; and that none of the parties to this proceeding have raised any contention that employees within the CSO classification are professional or craft employees.

6. That the District operates and maintains a system of pipe, and related pumps, valves and gates which permit the District to control the flow of sewerage and to direct the flow to waste water treatment plants, storm sewers or storage facilities; that the District has installed a new computer system at the facility located at 13th and College to centrally monitor and control the flow of sewerage

throughout the sewerage district; that the employees in the CSO classification will monitor the operation of this new computer system; that the "CLASS JOB DESCRIPTION" for the CSO classification reads as follows:

General Summary

Under supervision, operate a dual, real time computer system that provides automatic control of the sewerage collection system and the in-line storage facilities. Respond to needs for local control of remote facilities, generate reports, and perform supplementary duties.

Work is performed in computer room environment on rotating shift.

Duties

1. Using computer, monitor and control the approximately 250 miles of sewerage collection system from console, i.e., opening and closing of valves and gates to minimize bi-pass (sic) to rivers, diverting flow to tunnels, etc. When directed, divert specific flows to specific treatment plants (for example, flow from area near packing houses has high nitrogen level, may be diverted to Jones Island for use in Milorganite.)
2. Access data from the 3000 points in the collection system monitored by the computer and program in desired control enhancements, and generate reports as needed or requested. i.e.,
 - daily log (used by flow gauging department for evaluating adequacy of present system and future needs)
 - monthly flow report
 - yearly operation report
3. Evaluate information and take appropriate action when data collectors alert alarm printer that flow is out of established range; for example, instruct computer controlled gate to open to allow diversion to avoid-bypass of flow into rivers, etc.
4. Maintain historical file, magnetic tapes, discs; use tape drive equipment for accessing historical data as needed for reports.
5. Generate requests for field work - for example, if computer says a gate is not opening, make work request for maintenance.
6. Operate Base Station #1 2-way radio on all shifts to alert field maintenance crews of equipment malfunction and to relay messages as necessary.
7. Assist in the development and maintenance of the central control systems, e.g.;
 - use off-line computer to develop potential control loop, using graphics and related field instrument data points to increase efficiency of collection system control.
 - run and interpret all diagnostic tapes for the peripheral equipment
 - provide technical assistance to instrument and control group

- check integrity of communication phone lines with data collection points.
- 8. Provide a variety of data processing functions using the off-line computer such as report formatting, graphics, etc., for Agri-Life, Central Laboratory, Fleet Management, MMIS, etc.
- 9. Stay informed of developments in job related technology.
- 10. Perform other duties as assigned.

Scope of Activities and Operating Environment

In general, the position requires a working knowledge of the semi-complex to complex and specialized tools and equipment (diagnostic tape, computer, peripherals, etc.), of the semi-complex work methods and processes involved in monitoring, controlling, evaluating information and determining appropriate action, of the conveyance system and its means of control, and of the varied but repetitively used manuals and information worked with.

The work holds frequent opportunity for providing assistance or causing inconvenience to others in the MMSD South work unit, including field maintenance. The working environment and work are such that there is little likelihood of causing injuries to oneself or others. Frequent concentration is required.

Assignments are outlined in general and receive a general review. Work requires following general instructions and evaluating routine situations against prescribed standards to choose alternatives.

Relief Responsibilities

Another Operator

Requirements

An associate degree in computer science, or closely related field from an accredited technical school;

OR

High school graduate or equivalent and two years of experience operating a computer for process control functions involving knowledge of programming languages and computer systems.

that employes in the CSO classification work a rotating schedule to provide round the clock coverage of the computer's operation; and that there is one employe in the CSO classification per shift.

7. That some of the functions incorporated into the computer located at 13th and College were formerly performed from a central control room at Jones Island; that throughout the period of time preceding the transfer of functions from the control room at Jones Island to 13th and College, the employes responsible for overseeing the operation of the central control room at Jones Island worked a rotating schedule to provide round the clock coverage of the central control room's operation; that from the period from November of 1985 until at least the time of hearing on this matter, employes in the classifications of Operating Engineer II and Operating Engineer IV were responsible for the oversight of functions performed from the central control room at Jones Island; that the employe in the classification of Operating Engineer IV stayed within the central control room at all times, while the employe in the classification of Operating Engineer II would work inside or outside of the central control room as events required; that the "CLASS JOB DESCRIPTION" for Operating Engineer IV reads as follows:

JOB FUNCTION

Under supervision, operates or maintains stationary engines and mechanical equipment to provide power, air and vacuum production and distribution.

JOB DUTIES AND PROCEDURES (TYPICAL):

Under supervision, control and supervise equipment listed below whose monitoring devices and controls are located in the Central Control Room.

Equipment: a. Gas turbine control panel
b. Supervisory control board
c. Electrical switchboard
d. Dispatch board

Operate communications center: handle incoming and outgoing mobile communications, answer and channel incoming plant calls.

Operate equipment by local control when necessary, maintain log sheets and change charts on a fixed time schedule. Adjust systems and controlled equipment to meet management and operational requirements.

Respond to equipment problems: shutting down, starting up standby, requesting maintenance as appropriate.

Maintain record of equipment status.

Maintain a clean and orderly work area and security of CCR operating area.

Assist in training of personnel.

Perform other duties as assigned.

MACHINES AND EQUIPMENT INVOLVED (TYPICAL):

Turbines
Compressors: Control Air, Plant Air, Gas, Process Air
Waste Heat System
Pumps: Return Sludge, Low Level, Scrubber
Telemetry equipment in the monitoring of booster and relief stations
Boilers

TOOLS AND GAUGES USED (TYPICAL):

Gas turbine control panel
Supervisory control board
Electrical switchboard
Dispatch board

SOURCE OF METHODS AUTHORITY:

Verbal instructions; operating manuals

ACCURACY REQUIREMENTS AND DIFFICULTY OF MEETING THEM:

None

RELIEF RESPONSIBILITIES (TYPICAL):

None

REPORTS TO:

Shift Supervisor II

QUALIFICATIONS:

Education/Training

1. Reading ability sufficient to understand technical material, charts and gauges.
2. Ability to make basic math computations: add, subtract, multiply and divide.
3. Ability to monitor equipment and make appropriate adjustments.

Experience

Experience incorporated in requirements for First Class Operating Engineer's License.

Licensing/Certification

City of Milwaukee First Class Engineer's License.

WORKING CONDITIONS:

Work requires occasional, unavoidable exposure to abnormal variations in temperature, unfavorable fumes, noise, dust and atmospheric condition. Work requires light physical effort and occasional lifting of up to 25 lbs.

that the "JOB DESCRIPTION" for Operating Engineer II reads as follows:

JOB FUNCTION:

Under supervision, observes and locally inspects all operating equipment associated with the Central Control Complex including, but not limited to the air compressing facilities, the Machinery Bay area, the heating system, and the water and air systems. Assure operations of Central Control components in absence of Operating Engineer IV.

JOB DUTIES AND PROCEDURES:

Assist Operating Engineer IV as required.

Locally observe and inspect the equipment listed below to ensure proper operating status within established parameters of pressure, temperature and flow. Follow established inspection procedure, start equipment locally as required; report any malfunction of equipment to Operating Engineer IV. Locate and eliminate trouble for Operating Engineer IV. Must be able to control Process Air Compressors locally.

Perform minor maintenance as necessary.

Log operational status of equipment pertaining to pressure, flow and temperature.

Locally inspect and observe operational areas for fire hazards or unsafe activity.

Maintain clean, orderly work area and equipment.

Assist in training of personnel.

Perform other duties as assigned.

MACHINES AND EQUIPMENT INVOLVED

Turbines
Waste Heat System

Boilers

Pumps: Return Sludge, Low Level, Scrubber, Vacuum, Filtrate,
Compressors of various types

TOOLS AND GAUGES USED:

Control panels
Electrical switch gear
Basic hand and power tools

SOURCE OF METHODS AUTHORITY:

Verbal instructions, operating manuals.

ACCURACY REQUIREMENTS AND DIFFICULTY OF MEETING THEM:

None

RELIEF RESPONSIBILITIES (TYPICAL):

Operating Engineer III

REPORTS TO:

Shift Supervisor II

QUALIFICATIONS:

Education/Training

1. Reading ability sufficient to understand technical material.
2. Ability to make basic math computations: add, subtract, multiply and divide.

Experience

Experience requirement incorporated in requirement for Second Class Operating Engineer's License.

License/Certification

Eligibility to obtain City of Milwaukee Second Class Operating Engineer's License within one year of appointment.

WORKING CONDITIONS:

Work requires intermittent unavoidable exposure to unfavorable atmospheric conditions or extreme temperatures, frequently noisy; may be intermittently dusty, oily or wet. Requires light physical effort and lifting of up to 25 lbs. on occasion.

that Local 317 is the collective bargaining representative for employees in the classifications of Operating Engineer II and IV; that the employees responsible for the maintenance and repair of the instrumentation equipment necessary to the operation of the central control room at Jones Island are within the classification of Control Technician; that the "JOB DESCRIPTION" for that classification reads as follows:

JOB FUNCTION:

Under supervision installs, maintains, calibrates, troubleshoots, repairs and overhauls all instrumentation and the supervisory system associated with power, air, and vacuum production and distribution.

JOB DUTIES AND PROCEDURES:

Installs, maintains, calibrates, troubleshoots, repairs and overhauls all powerhouse and supervisory systems, indicating, recording, telemetering, and controlling instruments (electric, electronic, mechanical, pneumatic) used to measure and control variables, such as pressure, flow, temperature, motion, force and chemical composition.

Implement a preventative maintenance schedule.

Maintain inventory of spare parts and inventory records.

Assist outside service engineers.

Maintain maintenance and repair records.

Read process and instrument diagrams.

Perform other duties as assigned.

MACHINES AND EQUIPMENT INVOLVED (TYPICAL):

Central Control Room Supervisory System

Turbine, boilers, control air compressors

Gas compressors

Miscellaneous pumps and equipment

Vaccum pumps

Plant air compressors

Process air compressors and controls

TOOLS AND GAGES USED (TYPICAL):

Oscilloscope

Pneumatic test equipment

Digital Multimeters

Deadweight Tester

Frequency Counter

"Wallace and Tiernan" Test Box

"GE-TAC" Test Kits

G-MAC Test Box

Speedtronics Test Kit

Thermocouple Tester

SOURCE OF METHODS AUTHORITY:

Verbal instructions: instrument maintenance manuals, outside service engineers.

ACCURACY REQUIREMENTS AND DIFFICULTY OF MEETING THEM:

Maximum variation of .5%.

RELIEF RESPONSIBILITIES (TYPICAL):

None

REPORTS TO:

Instrument Maintenance Supervisor

QUALIFICATIONS:

Education/Training

Associate Degree in Instrument Technology, Electronic Technology, Computer Technology or related field

Experience

None required

Licensing/Certification

None

WORKING CONDITIONS:

Work requires extremely light physical effort and intermittent exposure to noise.

that Local 317 is the collective bargaining representative for employes in the classification of Control Technician; that the employes who will be responsible for the maintenance and repair of the instrumentation equipment necessary to the operation of the computer at 13th and College after the maintenance agreement which was part of the purchase agreement for the computer expires, are within the classification known as Instrument Technician; that the "JOB DESCRIPTION" for that classification reads as follows:

JOB TITLE: Instrumentation Technician

JOB FUNCTION:

Under supervision, installs, maintains, calibrates, troubleshoots, repairs and overhauls instrumentation.

JOB DUTIES AND PROCEDURES (TYPICAL):

1. Installs, maintains, and repairs computers, micro-processors, recording, telemetering and controlling instruments used to measure and control variables such as pressure, flow, temperature, motion, force and chemical composition.
2. Maintains inventory of spare parts and inventory records.
3. Maintains maintenance and repair records and work orders.
4. Performs other duties as assigned.

MACHINES AND EQUIPMENT INVOLVED (TYPICAL):

Electronic, telemetering, mechanical and pneumatic instrumentation, etc.

TOOLS AND GAGES USED (TYPICAL):

Oscilloscope, digital multimeter, frequency counter, pneumatic test equipment, computer, etc.; specially designed hand tools such as jeweler screwdrivers, pliers, vice grips, screwdrivers and other hand tools.

SOURCE OF METHODS AUTHORITY:

Verbal and written instructions including the use of technical repair manuals.

ACCURACY REQUIREMENTS AND DIFFICULTY OF MEETING THEM

Plus or minus .5% of any accountable figures listed in technical manuals.

RELIEF RESPONSIBILITIES (TYPICAL):

Engineering Aide IV, Meter Reader

QUALIFICATIONS:

Knowledge, Skills and Abilities:

1. Knowledge of the principles, practices, concepts and techniques used in advanced electronics.
2. Knowledge of advanced mathematics such as geometry, advanced algebra and calculus.
3. Knowledge of physics.
4. Ability to read schematics or blueprints.
5. Ability to install or maintain instrumentation.
6. Ability to establish and maintain effective public and working relationships.
7. Ability to prepare accurate oral and written reports.
8. Ability to diagnose and repair equipment problems.

Education/Training:

1. Associate degree from a recognized college, university or trade school in instrument technology, or equivalent education or experience, or demonstrated ability.

Experience:

None required.

Licensing/Certification:

Valid Wisconsin driver's license.

WORKING CONDITIONS:

Exposure to all types of weather conditions, possible exposure to chlorine and sewer gas.

that AFSCME is the collective bargaining representative for employees in the classification known as Instrument Technician; that employees to fill the classifications of Control Technician and Instrument Technician are hired off the same hiring lists and members of each classification, with sufficient cross training, can perform the tasks of the other classification; that the equipment in the central control room at Jones Island is not entirely computer operated; that the District's South Shore Plant is computer operated; that the employees who operate the computers which operate the South Shore Plant are represented by AFSCME; that these computer operators spend about one-half of their time at a computer terminal and about one-half of their time making rounds through the plant to monitor the operation of the plant and to make any necessary repairs; that no formal computer training is required to operate the South Shore plant computers; but that an on the job training period of about one week is necessary to familiarize new employees with the computer; that the District is introducing five new computers into the South Shore plant's operation; that four of these new computers will be operated by employees represented by AFSCME and the other one will be operated by an employee represented by Local 317; that the computers at the South Shore plant monitor a system for in-plant sewerage treatment, and pick up one station beyond the confines of the plant; that no District employees were deemed qualified to transfer into the position of CSO without further training;

that said further training will take more than one year; and that of the five District employees in training at the time of hearing on this matter, four came from positions represented by AFSCME and one came from a position represented by Local 317.

8. That Richard Meagher is employed by the District at the facility located at 13th and College as the General Supervisor of the central control room; that Meagher is the immediate supervisor of employees in the CSO classification; that Meagher also supervises employees in the classification of Instrument Technician who work at the facility located at 13th and College, and who are represented by AFSCME; that Meagher does not supervise any employees represented by Local 317; that Fred Kehoe is employed by the District as a Shift Supervisor at its South Shore plant and, in that capacity, supervises employees represented by AFSCME and by Local 317; that John Brezinski is employed by the District as a Shift Supervisor at its Jones Island plant and, in that capacity, supervises employees represented by AFSCME and by Local 317; and that among the employees supervised by Brezinski are employees who man the central control room at Jones Island.

9. That employees in the CSO classification work exclusively in the control room of the facility located at 13th and College; that the only represented employees who also work at, or out of, that facility are Instrument Technicians who are represented by AFSCME; that the above-noted employees at the facility located at 13th and College use the same time clock to punch in and out on, use the same locker room facility and have access to the same lunchroom; but that Meagher has told employees in the CSO classification that he prefers them to eat in the control room in which they perform their duties; that Instrument Technicians have direct work contact with employees in the CSO classification only when they are being directed as to what equipment needs attention, and such contact may be made by phone or radio only; that employees in the Operating Engineer IV classification in the central control room at Jones Island have traditionally stayed exclusively in the central control room to perform their duties; and that employees in the various classifications represented by Local 317 at Jones Island do not necessarily punch in at the same time clock, or use the same locker room facilities, and do not leave Jones Island in the normal course of their duties, but do not necessarily spend their working time exclusively in the power plant itself.

10. That in the late 1950's, the District utilized about twenty-two stations within the sewerage system, including lift stations, relief pump stations and overflow gates; that each of these stations had either a telemetering system with an alarm or a kilowatt meter recording system which was transmitted, for monitoring purposes, to the Jones Island power plant; that this monitoring system was improved technologically over time with, for example, its communications component being improved by the use of mobile phones and ultimately by the use of a short wave radio system; that the monitoring system itself was improved over time and ultimately transferred intact to a new power plant on Jones Island; that the employees who directly monitored the operation of this system were represented by Local 317; that employees in the central control room at Jones Island could directly control the operation of four out of approximately fifty gates within the system; that in the event of problems within the system, an employee monitoring the system from the control room at Jones Island would either contact his supervisor to make a work request or would directly contact a field maintenance crew with such a request; that such a field maintenance crew consisted typically of three employees, two of whom, an electrician and a machinist, were not represented by either AFSCME or Local 317, and one of whom was represented by AFSCME; that such crews could and did operate the gates at the station sites; that the monitoring system discussed in this Finding of Fact developed continually from the 1950's until the new computer system ultimately installed at the facility located at 13th and College came on line; and that this computer system has incorporated and supplanted almost all of the monitoring functions performed from the central control room at Jones Island, and added broader capabilities and refinements, including the ability to monitor and to direct the operation of the entire system from a central location.

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

CONCLUSION OF LAW

That employees within the CSO classification share a greater community of interest with District employees represented by AFSCME than with District employees represented by Local 317.

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

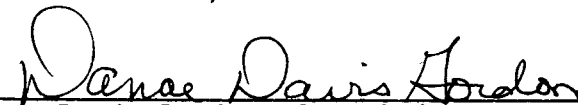
ORDER 2/

That employees within the CSO classification are properly included within the bargaining unit of District employees represented by AFSCME and described in Finding of Fact 4 above.

Given under our hands and seal at the City of
Madison, Wisconsin this 10th day of September,
1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Commissioner


Danae Davis Gordon, Commissioner

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- 2/ 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 therefor 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

(Footnote 2 Continued)

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.

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

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

BACKGROUND

The issue raised by the instant petition is whether the newly created CSO classification should be included within the bargaining unit represented by AFSCME or the bargaining unit represented by Local 317. No party has raised any question that the employees in the CSO classification should be considered professional or craft employees.

THE PARTIES' POSITIONS

AFSCME's Position

AFSCME argues initially that Local 317's certification restricts the unit it represents to power plant employees. AFSCME also notes that Local 317 has successfully argued in the past that work location should be a critical factor in the unit placement of classifications performing power plant work. From this, AFSCME concludes that work location should be a critical factor in the unit placement of the CSO classification, and further that this factor strongly supports placing the CSO classification in the AFSCME unit, since employees in the CSO classification work at a facility which is "several miles away" from the power plant. AFSCME summarizes its position thus: "The certifications for AFSCME and Operating Engineers have been in place for many years and have worked to the benefit of both unions and the employer. The WERC should continue to use the work location as one of the primary factors in determining bargaining units." Beyond this, AFSCME urges that employees in the CSO classification share common supervision with members of the AFSCME unit. In addition, AFSCME asserts: "There is a clear social inter-relationship between AFSCME bargaining unit members and the new Collection Systems Operators but no social inter-reaction at all with Operating Engineers bargaining unit persons." In addition, AFSCME contends that members of the unit it represents presently operate computers at the South Shore Plant, while Local 317 members do not operate any computers. Anticipating a Local 317 argument, AFSCME asserts that: "It is true that the work of the Collection Systems Operators replaces functions previously performed by Operating Engineers but the work is not similar and is work that the Operating Engineers have never performed nor are any presently qualified." According to AFSCME, employees in the CSO classification "have no significant contact or community of interest with the Power Plant" while there "is a strong community of interest between the Collection Systems Operators and AFSCME." It follows from this, according to AFSCME, that "(t)he 5 Collection Systems Operators belong in the bargaining unit represented by Petitioner herein."

Local 317's Position

Local 317 argues initially that employees in the CSO classification perform the majority of responsibilities previously performed by Local 317 represented employees in the central control room at Jones Island. More specifically, Local 317 asserts that: "A comparison of the respective job duties of the Operating Engineer IV and Collection Systems Operator demonstrates the similarity of the job responsibilities." A review of the position descriptions of the CSO and Operating Engineer IV classifications, coupled with witness testimony establish that "the majority of functions previously performed by the Operating Engineer IV will be performed by the C.S.O. at 13th and College." Local 317 summarizes its position on this point thus:

It is submitted that the similarity of skills and job duties is the most significant factor in determining whether the C.S.O. classification should be included within the Local 317 bargaining unit. Since the two classifications perform many of the same job duties and functions, there exists a substantial community of interest.

A review of the record establishes, according to Local 317, that "although the C.S.O. positions are newly created classifications, they are nonetheless the product of the natural and sequential progression of the original Control Systems Operator as represented by Local 317." Specifically, the progression is from the old "telemetering and monitoring system" in the old power house, to a technically improved central control room in "the new powerhouse," to the virtually complete transfer of the work functions of the central control room to the "state of the art" facility at 13th and College. From this, Local 317 concludes: "It is submitted that the C.S.O.s who control this new system constitute the "successor" classifications of the Operating Engineer IV's, and it is only logical that they become part of the unit that has historically performed their job functions." While acknowledging that its certification identifies its unit members as "power plant employees," Local 317 asserts that "neither the certification nor the testimony adduced at the hearing indicated that Local 317 personnel worked solely within the power plant, or that the Union ever intended to exclude from its jurisdiction any individuals sharing similar skills and duties who did not specifically work within the confines of the power plant." Beyond this, Local 317 asserts that the "the factors raised by Local 366 constitute merely a de minimis community of interest between Local 366 and the Collection Systems Operator positions." Specifically, Local 317 contends that the "common workplace and supervision" of CSOs and AFSCME unit members is not critical because "(t)he record . . . indicates that there will be virtually no contact between these classifications because of the nature of their respective job duties and the location of their work." Noting that "(t)he common work place factor may be significant when day-to-day contact exists between the two classifications," Local 317 argues that the amount of contact between employees in the CSO classification and employees in the other classifications at 13th and College will not be significant. Regarding the supervision of employees in the CSO classification, Local 317 notes that dual supervision of Local 317 and AFSCME represented employees is not uncommon in the District. Regarding the "knowledge, skills and qualifications" of employees in the CSO classification, Local 317 asserts: "Although the C.S.O. classification is new and will require training, the overall purpose and function of the job is basically the same as that performed by the Operating Engineer at Jones Island." In addition to this, Local 317 contends that the computer work performed by South Shore plant employees is distinguishable from the work performed at 13th and College. Viewing the record as a whole, Local 317 concludes: "It is the contention of Local 317 that the C.S.O. classification constitutes another step in the natural progression of the fundamental job of monitoring and controlling the sewerage flow throughout the District, and that, therefore, the classification appropriately belongs within the 317 bargaining unit."

The District's Position

The District has taken no position regarding the unit placement of the employees in the CSO classification, and has not filed any brief.

DISCUSSION

Although Local 317 has argued that the CSO classification constitutes a successor position to the position of Operating Engineer IV in the central control room at Jones Island, the issue before the Commission is simply whether employees in the CSO classification share a closer community of interest with employees in the bargaining unit represented by AFSCME or the bargaining unit represented by Local 317. This is not to say that Local 317's argument regarding the historical evolution of the CSO classification is irrelevant, but rather that the argument addresses but one of the criteria traditionally applied by the Commission to determine the bargaining unit in which a position should be included. However, we note that although the CSO classification is the product of an evolutionary process, that product is sufficiently new that no current employee within the District was deemed qualified to fill any opening within it without more than one year of further training. Thus, the classification is sufficiently distinguishable from whatever historical antecedents it may have to warrant limited weight being given to this criterion.

The community of interest criteria traditionally applied by the Commission include the duties and skills of the employees involved, the similarity of wages, hours and conditions of their employment, the commonality of their

supervisors and workplace, and the bargaining history of the parties. Not all of these criteria are necessarily accorded the same weight, and in some cases one or more of the criteria may predominate. 3/

The duties and skills of employees in the CSO classification are most closely related to employees in the classification of Operating Engineer IV who monitored the central control room at Jones Island. Local 317 has meticulously set forth at hearing and its brief the specific similarities. That analysis will not be repeated here except to note that the Findings of Fact entered above support Local 317's conclusion that " . . . the majority of functions previously performed by the Operating Engineer IV will be performed by the C.S.O. at 13th and College." This fact militates in favor of placing employees in the CSO classification in the Local 317 represented bargaining unit. As noted above, however, these similarities can not be considered to create a "successor" position since the new classification is sufficiently new to require over one year of training for any applicant.

The criterion of the similarity of wages, hours and conditions of employment is not a significant factor in the present matter. The ultimate wage rate of employees in the CSO classification is at least in part dependent on the outcome of this case, since the District has agreed to bargain that rate with the prevailing union. The hours of work and certain of the conditions under which employees in the CSO classification will work are similar to the employees in the Operating Engineer IV classification who monitored the control room at Jones Island since shifts are set up to allow round the clock coverage, and both classifications spend their working hours almost exclusively within a control room. This fact is tempered, however, by the fact that employees in the CSO classification work at a control room which is geographically separate from the Jones Island plant. This points to the application of the next of the Commission's community of interest criteria.

Employees in the CSO classification work at a common worksite and under common supervision with employees in the AFSCME represented bargaining unit. Local 317 accurately points out that Shift Supervisors at both the Jones Island and South Shore plants supervise both AFSCME and Local 317 represented employees. Similarly, it must be noted that the presence of a lunchroom at the facility located at 13th and College, which is available to employees in the CSO classification and to AFSCME represented employees, is tempered by the fact that Meagher has told employees temporarily filling the CSO classification that he prefers that they remain in the control room while eating. Nevertheless, the fact remains that employees in the CSO classification work at the same worksite and under common supervision with AFSCME represented employees.

The bargaining history criterion encompasses Local 317's assertion that the CSO classification is the natural outgrowth of a function performed by employees represented by Local 317. The line of demarcation between the Local 317 and the AFSCME represented units has been a point of contention throughout the history of those units. Local 317 correctly asserts that assigning to it employees who perform control room functions would best comport with the established bargaining relationship. However, AFSCME's contention that work location has been a critical factor in bargaining unit placement and in the bargaining relationship which flows from that placement is of greater significance.

On balance, the application of the community of interest criteria in the present matter warrant placement of the disputed positions in the AFSCME unit. Such a result is consistent with our holding in Milwaukee Sewerage Commission, Dec. No. 13597 (WERC, 5/75) wherein we stated:


(sic) of supervision warrant that the Control Technician and the Control Technician Trainee share a closer community of interest with employees in the unit represented by Operating Engineers, and therefore we have determined that said positions are in the latter unit.


In the instant case, the closest represented position is the Operating Engineer IV position in the Local 317 represented bargaining unit, but the incumbents of that position require extensive training to qualify for the CSO position. In the prior case, the AFSCME represented classification of Instrument Technician was the closest related position to the positions then in dispute. In the instant case, as in the prior case, interchange between the represented and the disputed positions is limited, while the commonality of worksite and supervision is apparent. The criteria which operated in the prior case to mandate the placement of the Control Technician and Control Technician Trainee positions in the Local 317 represented bargaining unit operate in the instant matter to mandate the placement of the employees in the CSO classification in the AFSCME represented bargaining unit. The result would be different had the District chosen to locate the CSO function in the control room at Jones Island.

Dated at Madison, Wisconsin this 10th day of September, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Danae Davis Gordon, Commissioner