

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:

In the Matter of the Petition of : Case 1

: No. 41440 ME-302

CITY OF OCONOMOWOC : Decision No. 6982-A

:

Involving Certain Employes of : Case 2

: No. 41346 ME-299

CITY OF OCONOMOWOC : Decision No. 7170-B

:

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson Street, Milwaukee, Wisconsin 53202, by Mr. William S. Kowalski, appearing for the IBEW.
Lindner & Marsack, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, by Mr. Roger E. Walsh, appearing for the City.

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

On December 1, 1988, the City of Oconomowoc filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of City employes in the Department of Public Works, Parks and Forestry Department and Wastewater Treatment Plant, which unit is represented by Wisconsin Council 40, AFSCME, AFL-CIO, by including in said unit the employes of the City's Utility, which employes have been in a separate bargaining unit represented by Local 2150, International Brotherhood of Electrical Workers. Hearing in the matter was held in Oconomowoc, Wisconsin on February 20 and March 20, 1989 before Douglas V. Knudson, a member of the Commission's staff. Wisconsin Council 40, AFSCME, AFL-CIO was served with a copy of the Notice of Hearing, but did not appear at the hearing. A stenographic transcript of the hearing was received on May 5, 1989. The parties completed the filing of post-hearing briefs on August 10, 1989. The Commission, being fully advised in the premises, makes and issues the following:

FINDINGS OF FACT

1. The City of Oconomowoc, herein the City, is a municipal employer and has its principal offices at 174 East Wisconsin Avenue, Oconomowoc, Wisconsin 53066.
2. Local Union No. 2150, International Brotherhood of Electrical Workers, AFL-CIO, herein IBEW, is a labor organization and has its principal offices at 6227 West Greenfield Avenue, West Allis, Wisconsin 53214.
3. Wisconsin Council 40, AFSCME, AFL-CIO, herein AFSCME, is a labor organization and has its principal offices at 5 Odana Court, Madison, Wisconsin 53719.
4. Pursuant to an election conducted by the Commission, 3/ IBEW Local Union No. 494 was certified as the bargaining representative of all manual employes of the City of Oconomowoc-Utility Commission employed in the electrical and water departments, excluding office and supervisory personnel. The City and Local 494 stipulated to said election and no hearing was held in the matter. Although there has been no formal change of the certified bargaining representative from IBEW Local 494 to IBEW Local 2150, since approximately 1972 the City's Utility Commission has negotiated contracts, the latest of which covered the period of January 1, 1987 through December 31, 1988, with Local 2150 covering the unit of Utility employes for which Local 494 had been certified as the bargaining representative. The IBEW unit currently consists of 13 employes: six (6) craft employes in the classifications of maintenance electrician (1), electric foreman (2), and lineman (3); a groundman on the electric crew; a water foreman, two water workers and a station operator; and, two meter readers.

5. Pursuant to an election conducted by the Commission, 4/ Oconomowoc City Employees, Local 1747, AFSCME, AFL-CIO, was certified as the bargaining representative of all employes of the City of Oconomowoc employed in its Department of Public Works and Parks Department, excluding supervisors, assistant city engineer, office clerical and all other employes. The collective bargaining agreement between the City and AFSCME for the period of January 1, 1987 through December 31, 1988 described the bargaining unit as "the regular full-time employees of the City of Oconomowoc employed in its Department of Public Works, Parks and Forestry Department and Waste Water Treatment Plant, excluding Supervisors, Assistant City Engineer, Office Clerical Workers and all other employees". The AFSCME unit currently consists of 18 City employes; nine in the Department of Public Works, five in the Parks and Forestry Department, and four in the Wastewater Treatment Plant. The following job classifications are covered by the AFSCME contract; mechanics, tree trimmer, equipment operators, truck driver, laborer (I and I-A), wastewater treatment plant operator, laboratory technician, sewer systems and plant maintenance worker (A and B), and utility person.

6. On December 1, 1988 the City filed a unit clarification petition with the Commission seeking to include the employes represented by IBEW in the bargaining unit represented by AFSCME. IBEW opposes such an inclusion. AFSCME has taken no position on the matter. The City bases its request on its belief that the abolition of its Utility Commission caused the Utility employes to become City employes and that a separate bargaining unit of former Commission employes is inappropriate.

7. Effective August 19, 1958, the Oconomowoc City Council created a Water and Light Commission, herein Utility or Utility Commission, consisting of five members appointed by the Council. None of the said five members could be Council members. The Mayor was an ex-officio member of the Commission without any voting power. The Utility was responsible for providing electrical and water service to the residents and businesses of the City. The Utility Commission adopted annual budgets without any Council subsidy, input or approval. The City has loaned money to the Utility for cash flow purposes at reasonable interest rates. The Utility funded its operation through user fees which fees were regulated by the Public Service Commission (PSC). The Utility purchased and titled vehicles for its own use separate from the City purchases of vehicles. The Utility insured its vehicles through a different company than did the City. Both the City and Utility employes were covered by the same policies for life insurance, health insurance, and short-term disability insurance. The Utility reimbursed the City for the costs of those insurance programs for the Utility employes. The Utility employes, but not the City employes, were covered by a long-term disability insurance policy. The Utility had a bank checking account separate from the City accounts. Checks written on the Utility account were signed by the City Clerk, the City Treasurer and the Utility Commission President. The Utility did not own any real estate. The City held title to all real estate. The Utility did enter into contracts without getting approval from the City Council. In July 1986, the Utility and the Soo Line Railroad entered into an agreement for an easement for an underground wire crossing for which the Soo Line Railroad received monetary compensation from the Utility. The agreement was signed by the City Clerk and the Utility Director. In April 1983, only the Utility Director signed an agreement under which utility poles were purchased from the Utility by the Wisconsin Telephone Company. The Utility employes worked and stored equipment in approximately one-half of a City-owned building. The other half of the building was utilized by the City Department of Public Works (DPW). There is a door in the wall which divides the building into the parts occupied by DPW and the Utility. At the time of the hearing, the Utility was in the process of moving into a newly constructed building also owned by the City. The Parks and Forestry employes and equipment will then share the existing building with the DPW. The Utility hired its own director and employes, set work rules for its employes and negotiated collective bargaining agreements with the IBEW. Although the Utility employed the same attorney for its labor negotiations as did the City, the Utility was billed separately by the attorney for his services to the Utility. Payroll data was entered into the City's computer system by a Utility employe, but the payroll checks for Utility employes were issued by the City. The City billed the Utility for that service.

8. Prior to June, 1988, there had been infrequent interchange of personnel between the Utility and DPW. A few times each year, Utility employes would assist DPW wastewater treatment plant operators with pump and/or electrical problems. There has been occasional interchange of vehicles, such as pickups and bucket trucks, between the Utility and DPW. Usually these instances involving employes and/or vehicles did not result in any interagency billings, unless the costs could be billed to a third party other than the City or the Utility. Occasionally, a Utility employe would operate a Utility-owned dump truck to assist the DPW crews in snow removal and DPW would be billed for the operator's time. There may have been occasional instances when DPW employes and Utility employes worked together to patch streets after the Utility employes repaired broken water mains, although the patching is usually

2/ City of Oconomowoc, Dec. No. 7170 (WERC, 7/65).

performed by DPW employes. Both the DPW and the Utility employ a mechanic to maintain their respective vehicles. Although they perform similar work, in the past the mechanics have worked only on their respective department's vehicles. The City has begun to have the mechanics work on all vehicles, rather than just the vehicles from the department to which they are assigned. Electric and water employes frequently work together and share equipment. The Utility mechanic maintains vehicles for both the water and the electric crews. While water employes repair water main breaks, the electric foreman digs the hole which allows access to the break. Water crew employes have assisted electric crew employes in stringing overhead lines and in repairing storm damage. The electric crew's truck driver assists the water crew when an extra employe is needed. The meter readers read both electric and water meters. Other electric and water crew employes read meters when the meter readers are absent. Occasionally electric crew employes work on the meters.

9. Until March 1977, the City Treasurer collected revenues and performed fund investment and debt management for the Utility as the Utility's part-time Treasurer and Office Manager. The Utility reimbursed the City for one-third of the City Treasurer's salary for those services. In March 1977, the Utility hired an office manager who assumed the responsibility for collecting Utility revenues. The City Treasurer continued to perform, and currently is performing, fund investment and debt management for the Utility. At that time the Utility's share of the City Treasurer's salary costs was reduced from one-third to between 10 and 15 per cent. The City Treasurer reported separately to both the City Council and the Utility Commission on his respective responsibilities. In May 1982, the City Treasurer began to serve as the Utility's administrator and personnel officer and became responsible for: establishing performance standards for the Utility Director; evaluating the Director's performance; developing policies for the Utility in the areas of purchasing, budgeting, financial planning, personnel, customer communications and employe training; and, directing, coordinating and expediting the activities of the Utility. The City Treasurer reported directly to the Utility Commission concerning the foregoing responsibilities.

10. Effective June 20, 1988, the City Council adopted an ordinance which abolished the Utility Commission and vested control of the Utility in the City Council. The Council established a standing Utility Committee of three Council members. The other four standing committees of the Council are Finance, Public Services, Protection and Welfare, and Personnel. The City Administrator was made responsible for supervising the operation of the Utility. The Utility Director now reports to the City Administrator, along with the Director of Public Works, the City Clerk, the Finance Director and the City Engineer. In September 1988, the City Council approved the hiring of the current Utility Director. The 1989 Utility budget was submitted to the City Council for approval. The name of the Utility's checking account was changed from "City of Oconomowoc Utility" to "City of Oconomowoc-Electric Utility." Checks are now signed by the City Comptroller, rather than the Utility Commission President, the City Clerk and City Treasurer. Now the same insurance policy covers all City-owned vehicles, including those used by the Utility employes. The City, rather than the Utility, holds title to the Utility vehicles and purchases those vehicles. Due to PSC regulations

which require separate accounts for Utility revenues and expenses, the Utility still reimburses the City for such things as the cost of health, life and short-term disability insurance coverage for Utility employees.

11. Following the elimination of the Utility Commission, the following organizational changes were implemented: five waste water treatment operation employes, including the manager, are now supervised by the Utility Director, rather than Director of Public Works; an administrative secretary is now supervised by the City Clerk, rather than the Utility Director; and, eight positions, i.e., one office supervisor, one billing coordinator, one bookkeeper, two meter readers, two customer service clerks and one inventory clerk, are now supervised by the City Finance Director, rather than the Utility Director. The Utility Director now oversees 18 employes, two of whom are supervisors. At the hearing the parties stipulated that the following six Utility employes are craft employes: two electric foremen, Gary Kopps and James Kleinschmidt; two journeyman linemen, Tim Lauer and Dan Jarocki; one apprentice lineman, Tim Stelpflug; and, one maintenance electrician, Charles Schneider. Non-craft Utility employes in the IBEW unit, who are supervised by the Utility Director, are: a water foreman (John Huebner), two water workers-1st class (Elliot Connor and Steve Roush), a station operator (William Newbecker) and a groundman (Michael Moore). The Utility Director also supervises a draftsman, who is not in a bargaining unit, and four waste water treatment employes, three of whom are in the AFSCME unit.

12. Excluding the stipulated craft positions, there is a similarity in the levels of occupational skills for the employes in the IBEW and AFSCME units. An individual seeking employment in the Water Utility should be mechanically inclined and have some knowledge of water mechanics, chemicals, the installation and operation of water mains and valves, and the repair of hydrants. The Electric Utility looks for applicants with some educational and/or work back-ground in electricity so they are familiar with basic electricity, functions of an electric utility and how certain electrical equipment operates. There is a four year apprenticeship program for the craft positions. Craft employes attend seminars relating to their duties. The job descriptions for certain of the positions in the AFSCME bargaining unit also list desired entry level skills and knowledge similar to those of the Water Utility positions. Mechanical ability is desirable for the Laborer I position.

The Laborer II and III classifications list the following as part of the desirable qualifications: "Knowledge of sound principles and practices in operation of motorized equipment. Working knowledge of safe and effective operations of specialized equipment, mechanical aptitude." The Senior Mechanic classification lists as desirable qualifications "Thorough knowledge of shop tools, equipment, materials and shop practices. Skills in mechanical repair work and welding" and "mechanics trade training and five years of skilled experience in mechanical repair work in the automotive field." Wastewater Treatment Plant Operators must either possess or be able to attain state certification and have a "general knowledge of wastewater operations, good knowledge of mechanical and electrical equipment found in wastewater plants". The Wastewater Laboratory Technician should have "Knowledge of basic principles of chemical, physical and bacteriological examination and treatment of wastewater, sludge, effluent and by-products. Knowledge of standard laboratory principles, technology and equipment." Water employes maintain water meters and pumps, install equipment, such as water mains, valves, boxes and meters, take water samples, and monitor water flow. Electric employes install and maintain electrical equipment, such as overhead and underground power lines, street lights, meters, and traffic controls, perform tree trimming, and handle customer problems. Public Works employes maintain and clean City buildings and facilities, perform street work, such as patching, ditching, culvert work and dam maintenance, and plow and remove snow. Parks and Forestry employes maintain City parks and grounds including ball diamond maintenance, grass cutting, building maintenance and snow removal. Waste Water Treatment Plant employes operate and maintain the City's sewerage system and treatment plant, including lift stations and meters. The plant operators read flow charts and meters, check equipment and take samples. The laboratory technician conducts tests and documents the results.

13. The hourly wage rates effective January 1, 1988 for the classifications covered by the AFSCME contract range from \$9.88 to \$10.57 for new employes and from \$10.99 to \$11.73 for employes after one year (schedule maximum). The hourly wage rates, effective January 1, 1988 for the craft employes covered by the IBEW contract range from \$14.70 to \$16.15, while the hourly wage rate for the water foreman was \$14.45. The hourly wage rates, effective January 1, 1988, for the other classifications covered by the IBEW contract have the following ranges: start - \$8.34 to \$9.26; after one year - \$9.39 to \$10.42; and, after two years (schedule maximum) - \$10.64 to \$11.81.

14. The IBEW and AFSCME employes have similar hours of work. The normal hours of work for the IBEW employes are Monday through Friday from 7:30 a.m. to 12:00 noon and from 12:30 p.m. to 4:00 p.m. for a total of eight (8) hours per day and forty (40) hours per week. Except for the second shift Waste Water employes, the AFSCME employes normally work Monday through Friday from 7:00 a.m. to 12:00 noon and from 12:30 p.m. to 3:30 p.m. for a total of eight hours per day and 40 hours per week. Waste water employes on the second shift work

from 3:00 p.m. to 7:30 p.m. and from 8:00 p.m. to 11:30 p.m. Both groups of employes are paid at the rate of one and one-half their regular rate for all hours worked in excess of 40 hours per week and have the option of choosing compensatory time off in lieu of overtime pay. Both groups of employes receive a twenty (20) minute coffee break in the forenoon only and 10 minute clean-up periods prior to both the noon break and the end of the work day. The two groups have the following common or identical fringe benefits: short term disability insurance, health insurance, life insurance, employer paid contributions to the Wisconsin Retirement Fund, sick leave accumulation at the rate of one and one-half (1 1/2) days per month of service to a maximum of ninety (90) days, unpaid leaves of absence for personal reasons for a maximum of thirty (30) days, funeral leaves, worker's compensation benefit supplements, longevity pay, the number of paid holidays and overtime pay for work on holidays. The vacation schedule for both groups is the same, except IBEW employes receive five weeks after 20 years while AFSCME employes receive five weeks after 23 years.

15. Based on the similarity of skills, wages, hours, fringe benefits and working conditions between the employes in the AFSCME bargaining unit and the non-craft employes in the IBEW bargaining unit, said groups of employes share a sufficient community of interest to warrant their inclusion in the same bargaining unit. Existing limited differences in duties, supervision and work place between the two groups of employes are insufficient to warrant continued existence of two separate bargaining units of non-craft blue collar employes when balanced against the statutory mandate against undue fragmentation of bargaining units.

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

CONCLUSIONS OF LAW

1. During the period of August 18, 1958 to June 20, 1988, the Utility Commission was a separate municipal employer of its employes.

2. Effective June 20, 1988, the City became the municipal employer of the employes of the former Utility Commission.

3. A separate bargaining unit of former Utility Commission employes is not an appropriate unit with the meaning of Sec. 111.70(4)(d)2.a., Stats. in that it would unduly fragment bargaining units within the City's workforce.

4. The bargaining unit of all non-craft blue collar employes of the City is an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. Stats.

5. The craft employes of the former Utility Commission, who now are employed by the City, would constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats. and they are entitled to a vote to determine whether they desire to constitute a separate bargaining unit or to be included in the existing AFSCME bargaining unit of non-craft blue collar employes.

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

ORDER CLARIFYING BARGAINING UNIT
AND DIRECTING ELECTION 3/

1. The non-craft blue collar employes of the former Utility Commission shall be, and hereby are, included in the bargaining unit of City employes represented by Local 1747, AFSCME, and therefore the description of said unit is hereby amended to read as follows:

All regular full-time and regular part-time blue collar employes of the City of Oconomowoc, excluding supervisors, assistant city engineer, office clerical workers and all other employes and conditionally excluding craft employes.

3/ 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 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.

(Footnote 3/ Continued on Page 7

2. 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 Directive in the following voting group:

all regular full-time and regular part-time electrical craft employes of the City of Oconomowoc, excluding supervisory, managerial, confidential and all other employes who were employed on October 13, 1989, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining: (1) whether a majority of employes in said voting group desire to be included in the same bargaining unit with the non-craft employes, which unit is described in Conclusion of Law 1 above and to be represented by Oconomowoc City Employees, Local 1747, AFSCME; and (2) if a majority of the employes in said voting group vote not to be included with the non-craft employes, whether a majority of the electrical craft employes voting desire to be represented in a separate bargaining unit by the International Brotherhood of Electrical Workers, Local Union No. 2150, for the purposes of collective bargaining with the City of Oconomowoc on questions of wages, hours and conditions of employment, or to be unrepresented.

Given under our hands and seal at the City of Madison, Wisconsin this 13th day of October, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

(Footnote 3/ Continued)

(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.

CITY OF OCONOMOWOC

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

BACKGROUND

Currently, IBEW represents a bargaining unit of employes of the former Utility Commission, while AFSCME represents a bargaining unit of DPW, Parks, Forestry and Waste Water Treatment Plant employes, herein referred to either as the DPW unit or the AFSCME unit. The City's petition seeks the accretion of

the former Utility employes to the bargaining unit represented by AFSCME.

POSITION OF THE IBEW

IBEW opposes the accretion of the former Utility employes into the AFSCME bargaining unit. The abolition of the Utility Commission does not require, as a matter of law, that the Utility employes be merged into the AFSCME unit. The WERC rejected such a result in the City of Clintonville, 5/ which case involved facts virtually identical to those in the instant matter. In the City of Clintonville decision, the WERC determined that the City was a successor to the Utility Commission and rather than accreting the Utility employes into the bargaining unit of Street Department employes, concluded that the City had a duty to bargain with the bargaining representative of the Utility employes in a separate unit.

Under the WERC's well established analysis for determining appropriate bargaining units, the Utility employes should not be merged with the City's AFSCME bargaining unit. The skills required of the electric and water employes are greater and more technical than those required of other employes. The water and electric employes share a common physical facility, which is separate from the physical facilities of other City employes, often work together and share equipment. The former Utility maintenance mechanic does the repair and maintenance work for both electric and water utility vehicles, but does not work on other City vehicles. The former Utility employes have minimal interchange and contact with other City employes.

Presently, former Utility employes are supervised by the Technical Operations Manager. No other City employes report to the Technical Operations Manager, so there is no common supervision.

The Utility employes have been represented by the IBEW, either Local 494 or Local 2140, since 1964. Thus, there is a substantial bargaining history favoring the maintenance of a separate former Utility employes' bargaining unit.

The former Utility employes are a unique and distinct group of employes who deserve not to have their interests subordinated to the larger group of AFSCME represented employes. A continued separate bargaining unit of former Utility employes would not lead to undue fragmentation.

POSITION OF THE CITY

The Utility Commission was a separate municipal employer prior to its abolition. Now the City is the employer of the former Utility employes. Therefore, the IBEW bargaining unit is no longer appropriate, under the factors applied by the WERC in determining whether a particular bargaining unit is appropriate, and the employes in that bargaining unit should be accreted into the AFSCME bargaining unit since both groups of employes share an overwhelming community of interest.

Both groups are composed of blue collar positions. The similarity in job duties and skills between both the former Utility and the AFSCME positions is evidenced by the fact there has been some interchange of employes and by the testimony that the AFSCME employes could be trained to perform the duties of the non-craft Utility employes.

The wage rates for the AFSCME and the former Utility employes, outside of the foremen and craft employes, are sufficiently similar to justify inclusion of both groups into one bargaining unit. The two groups have similar hours of work, share the same insurance policies, and receive identical coffee break and clean-up time periods, overtime compensation, leaves of absence, sick leave, workers' compensation supplements, funeral leave, longevity pay, holidays and vacations.

The immediate supervisor of the water and electric employes is a different individual than are the immediate supervisors of the AFSCME employes. However, the City is considering having one supervisor for the electrical employes and a different supervisor for the water and wastewater employes. Further, the City Administrator is the ultimate overseer of all City employes, including the water and electric employes.

The physical separation of the work site of the water and electric employes from the work site of the AFSCME employes is insufficient to negate the other factors which overwhelmingly demonstrate community of interest between the former Utility employes and the AFSCME employes. In addition, the new Utility building and the two buildings occupied by the AFSCME, including Parks and Waste Water employes, will all be on the same contiguous land, without residential or other buildings in between. No other City employes will be located in these new buildings.

4/ Dec. No. 19858 (WERC, 8/82).

The factor of undue fragmentation clearly weighs in the City's favor. A number of WERC decisions have held that utility employes do not constitute an appropriate separate unit when, as in the instant case, the Utility Commission is abolished and the City assumes management and control of the Utility employes and where an existing bargaining unit representing all other City blue collar employes is already established. The WERC decision in City of Clintonville is distinguishable from the other WERC decisions, since it does not appear that those parties either presented evidence or made arguments relating to the issue of whether the Utility employes in said proceeding remained an appropriate unit. Further, if the IBEW prevails in this matter, then the IBEW potentially could represent two small bargaining units, one consisting of the former Utility craft employes and one of the former Utility non-craft employes, since the craft employes have never had a self-determination election.

Obviously, the bargaining history between the Utility Commission and IBEW is quite extensive. However, this is the first occasion on which the City, as the new employer, could raise the issue of the appropriateness of the bargaining unit. Thus, the bargaining history is immaterial. Neither is the bargaining history sufficient to outweigh the other factors which demonstrate that the former Utility employes should be accreted to the AFSCME unit.

DISCUSSION

Separate Employer Status

During the period from August 1958 to June 1988, the Utility adopted its own budget without seeking City approval, generated its own revenue through user fees which were regulated by the PSC, held bank accounts in its own name, purchased, insured, held title to, and licensed vehicles, entered into contracts, exercised independent control in personnel matters, negotiated labor agreements with the IBEW without obtaining City approval, and held Commission meetings separate from the meetings of the City Council. While the Utility employed the same attorney as did the City for collective bargaining and other labor relations matters, the Utility paid said attorney directly for said services. Similarly, the Utility was billed by the City for coverage of its employes under insurance policies which also covered City employes. When the City made loans to the Utility, interest was charged on the loans. The City and the Utility did share the services of the City Administrator/Treasurer, Mercier, but he reported separately to both bodies concerning his respective responsibilities for them. The Utility also reimbursed the City for a portion of Mercier's salary. Although checks paid from Utility accounts were signed by the City Clerk and City Treasurer, as well as a member of the Utility Commission, payment was first approved by the Utility Commission. The fact that the City held title to the building and land occupied by the Utility does not destroy the Utility's status as an independent municipal employer.

Based on the evidence in the record, it is clear that the Utility operated as a municipal employer separate from the City during the period from August 1958 to June 1988.

The evidence also shows that, since the abolition of the Utility Commission in June 1988, the City has assumed the management and control of the Utility. The City Council has established a fifth standing committee, the Utility Committee, to oversee the water and electric utility and the waste water treatment plant. Pursuant to PSC requirements, Utility expenses and revenues continue to be segregated from other City expenses and revenues, however, the Utility's budget is now subject to City Council approval. The Utility's bank accounts have been transferred to the City. Checks on those accounts are now signed by three City officials and no Utility representatives. The City now insures the Utility vehicles under the same policy as other City-owned vehicles, and purchases and holds title to the vehicles used by the Utility. Personnel matters affecting Utility employes, such as employment, collective bargaining and work rules, are now subject to City Council approval. It is clear that the City now is the employer of the former Utility employes.

The foregoing determinations are consistent with the factors considered and the rationale expressed by the Commission in prior decisions wherein it found that certain municipal bodies either were, 6/ or were not, 7/ separate employers.

5/ Door County, Dec. No. 24016-A (WERC, 3/88); City of Eagle River (Light and Water Department), Dec. No. 25218 (WERC, 3/88); Sheboygan County (Unified Board), Dec. No. 23031-A (WERC, 4/86); City of Cudahy, Dec. No. 21887 (WERC, 8/84); Village of Footville, Dec. No. 21322 (WERC, 1/84).

6/ City of Marinette (Water and Waste Water Utilities), Dec. No. 24353 (WERC, 3/87); City of Superior (Public Library), Dec. No. 23318-A (WERC, 2/86); City of Wauwatosa, Dec. No. 21145 (WERC, 11/83).

Appropriate Bargaining Unit

In determining the appropriateness of a unit, the Commission's decision is guided by Sec. 111.70(4)(d)2.a. Stats., which provides:

The Commission shall determine the appropriate 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 determination, the Commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

In exercising the above-noted statutory authority, the Commission has determined appropriate unit questions on a case-by-case basis and has given consideration to the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.

4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. 8/

As IBEW correctly argues, we must analyze the foregoing factors in the context of the question of whether a unit of former Utility employees is inappropriate, not whether such a unit is the most appropriate placement for these employees. This analysis must occur in the context of a "Utility" unit which does not include the craft employees as both sides concede that the craft employees are statutorily entitled to a separate unit should they so desire.

The non-craft Utility employees possess somewhat different skills and in most cases usually perform somewhat different duties than the AFSCME employees. However, all of the employees in both groups occupy blue collar positions. The differences in skills between employees in the two groups are no greater than the differences in skills between employees within each of the groups. Each group includes a mechanic who works on the vehicles used by the respective groups. The Water crew employees and the Wastewater Plant Operators would appear to have similar skills.

The wage rates, hours of work and fringe benefits of the former Utility and the AFSCME employees are very similar. The only real difference in benefits is that former Utility employees are covered by a long-term disability insurance plan while the AFSCME employees are not so covered.

While there have been occasions where DPW and Utility employees have worked together and/or where equipment was exchanged between the DPW and the Utility, such occurrences have been infrequent. Conversely, the Electric and Water crews regularly share equipment and work together on a much more frequent basis.

Currently, Gleason is the first line supervisor of the Water and Electric employees, except for the meter readers. The meter readers report to the Billing Coordinator and ultimately to the Finance Director. The DPW employees report to a different supervisor who in turn reports to the DPW Director. Thus, there is a lack of common supervision among the IBEW employees and between the IBEW and AFSCME employees.

As of the hearing, the former Utility employees shared a building with the DPW employees. The building was divided by a wall with a doorway. The City is constructing a new building for the Utility employees and equipment. Thus, the Utility employees will have a workplace physically separate from the DPW employees. The Wastewater plant operators are located in a separate building from the other DPW employees. The three buildings are in proximity to each other and on contiguous land with no other buildings between them.

While the bargaining history between the Utility Commission and IBEW was extensive, there is no bargaining history between the City and IBEW. In Madison Metropolitan School District, 9/ we stated:

Bargaining history is relevant only insofar as it relates to a previously established relationship between the parties.

As to the factor of fragmentation, it is clear that establishment of the overall blue collar non-craft unit sought by the City will create fewer units than the alternative sought by IBEW.

When analyzing whether the foregoing facts yield a conclusion that a unit of non-craft former Utility employees is inappropriate, it is instructive to look at certain Commission cases where we have been confronted with similar issues. The Commission has found separate bargaining units of utility employees to be inappropriate in other situations when the utility was not a separate employer.

7/ City of Seymour (Department of Public Works), Dec. No. 25201 (WERC, 2/88).

8/ Dec. No. 20836-A (WERC, 11/83).

In City of Madison (Water Utility), 10/ we stated:

The Commission concludes that, on balance, the facts preponderate in favor of the application of MERA's policy of anti-fragmentation 9/, given the indices of commonality, bargaining history, City-wide personnel administration and City control of finance and assets. We therefore conclude that a unit consisting of all full-time and part-time employes of the Water Utility is inappropriate and contrary to the principle of anti-fragmentation contained in Section 111.70(4)(d)2.a., MERA. The petition therefore has been dismissed. (Footnote omitted).

In City of Elkhorn (Light & Water Commission), 11/ we refused to establish a blue collar/white collar "departmental" unit sought by the Union and stated:

While it is true that the statute authorizes the Commission to establish departmental units, the unit sought by the Union herein is no longer departmental given the City's reorganization and would, even if departmental, still likely be inappropriate as causing undue fragmentation."

In City of Evansville, 12/ we refused to sever the Water and Light Department employes from a larger blue collar unit and stated in part:

. . . Nothing in the record distinguishes those employes from the other employes in the existing unit on the basis either of skill levels, general nature of work, hours or other conditions of employment. On the contrary, the list or classifications in the 1978 agreement covering the existing unit indicates that said unit consists entirely of non-craft, non-professional, blue-collar personnel. . . . Especially in view of those small numbers, neither the non-reliance on tax dollars for Water and Light operations, nor the physical and supervisory separation of the departments involved, nor petitioner's expressed concerns about the submersion of Water and Light employe interests in multi-department unit bargaining are sufficient (either alone or in combination) to overcome the anti-fragmentation policy expressed in MERA. Hence, we have concluded that the proposed separate unit would not be appropriate, . . .

In City of Wisconsin Dells (Water and Light Department), 13/ we refused to sever the Water and Light Department employes from a City-wide unit of blue-collar and clerical employes. We concluded that, while the Water and Light Department had a separate building, its own equipment, a separate budget and distinct functions, those factors did not significantly distinguish the interests of Water and Light employes from those of other employes in the existing bargaining unit.

In Madison Schools, supra, when the registered nurses became employes of the district, we were asked whether registered nurses should be part of the bargaining unit of teaching and other related professional personnel rather than exist as a separate bargaining unit. Previously, the nurses had been employes of the City of Madison in a separate bargaining unit represented by a different union than that which represented the existing district professional unit. We conclude it would constitute undue fragmentation to create a separate nurses unit where there existed another unit of all other professionals of the employer.

In our view, Madison Schools is quite instructive as to the appropriate disposition of this case. There, despite the differing duties and skills which nurses possessed when compared to other professionals, we found continuation of a separate unit inappropriate where the identity of the employer had changed. The statutory mandate that we avoid undue fragmentation was determinative. Here, the duties and skills of the non-craft former Utility employes are more comparable to those of the employes in the existing AFSCME unit than was the case for the nurses in Madison. Wages, hours and fringes are very similar between the IBEW and AFSCME units. The former Utility employes do not presently all have the same supervision. As noted earlier, bargaining history is not an operative factor because the City and the IBEW unit have no prior history. Inclusion of the Utility employes in the AFSCME unit avoids fragmentation of bargaining units. Thus, only the factor of separate work

9/ Dec. No. 19584 (WERC, 5/82).

10/ Dec. No. 24790 (WERC, 8/87).

11/ Dec. No. 16671 (WERC, 11/78).

12/ Dec. No. 14041 (WERC, 10/75).

location clearly favors a conclusion that the existing IBEW unit minus craft employes continues to be appropriate. Given the foregoing, we are satisfied that the record warrants a conclusion that the existing IBEW unit is no longer appropriate.

Contrary to the argument of the IBEW, our conclusion is not inconsistent with our decision in City of Clintonville. The background in that case was similar in certain respects to the instant matter in that: the city and the utility had been found to be separate municipal employers; the water utility employes and the city street department employes had been certified as separate bargaining units; and, subsequently, the city abolished the utility commission and assumed control of the water utility, whereby the water utility employes became city employes. The city therein refused to bargain with the representative of the former utility employes, asserting that the abolition of the utility commission meant said employes were automatically included in the existing street department unit and covered by an existing contract. The Commission concluded that the city's refusal to bargain violated Sec. 111.70(3)(a)4, Stats., in part, because a unit of former utility employes remained appropriate. The Commission noted when reaching its determination that the existing street department unit did not include all of the otherwise eligible employes of the city and thus was not itself the "most" appropriate unit of City employes. The Commission also pointed out that the utility was a separate department and that departmental units are permitted under Sec. 111.70(4)(d) 2.a., Stats. Herein, the former Utility employes are no longer all in the same department since the meter readers are now under the supervision of the Finance Director while the Electric and Water employes are under the supervision of the Utility Director. The Utility Director now supervises the Waste Water employes who are included in the AFSCME unit. In addition, the AFSCME unit here represents all other blue collar employes of the City thus presenting at least a "more" appropriate unit for inclusion of Utility employes than existed in Clintonville. In our view, these differences support a different result than we reached in Clintonville.

The IBEW also cites the Commission decision in City of Rhinelander 14/ in support of its argument that the maintenance of separate units would not result in undue fragmentation. However, in City of Rhinelander, we declined to combine existing City Hall and DPW units into a single unit because the two units had differing wages, duties, work schedules, number of hours worked, working conditions, supervision, workplace and had separate bargaining histories. Such differences were much more extensive than exist in the instant case and thus said case is clearly distinguishable.

As our earlier analysis indicates, there is a community of interest between the non-craft Utility employes and the employes in the existing AFSCME unit. Based on this community of interest and the anti-fragmentation policy expressed in MERA, we find that a City-wide bargaining unit of blue collar employes is appropriate and thus that the non-craft blue collar former Utility employes appropriately are accreted to the bargaining unit of blue collar employes represented by AFSCME. Any existing contract in the AFSCME unit does not automatically cover the accreted employe unless collective bargaining between AFSCME and the City produces this result. 15/

13/ Dec. No. 24518 (WERC, 5/87).

14/ Sheboygan County (Unified Board), Dec. No. 23031-A (WERC, 4/86); Trempealeau County (Housing Authority), Dec. No. 23469 (WERC, 3/86); Juneau County, Dec. No. 18728-A (WERC, 1/86); Joint School District No. 2, City of Sun Prairie, et. al, Dec. No. 20459 (WERC, 3/83); Minocqua Jt. School District, Dec. No. 19381 (WERC, 2/82); Chetek School District, Dec. No. 19206 (WERC, 12/81); Cochrane-Fountain City Community Joint School District No. 1, Dec. No. 13700 (WERC, 6/75); City of Fond du Lac, Dec. No. 11830 (WERC, 5/73). Our Clintonville decision erroneously conveys a contrary understanding. No. 6982-A
No. 7170-B

In accordance with Sec. 111.70(4)(d)(2)a., Stats., the employes who the parties stipulated to be craft employes will be given a vote to determine whether they desire inclusion in the AFSCME unit or whether they desire to constitute a separate unit represented by IBEW. 16/ Since AFSCME has not expressed a desire to represent a separate unit of craft employes, if the craft employes vote in favor of a separate unit, their choices on the representation ballot will be IBEW and no representation.

Dated at Madison, Wisconsin this 13th day of October, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

15/ We held in Shawano County, Dec. No. 22382 (WERC, 2/85), aff'd, Dec. No. 85-CV-86 (CirCt. Shawano, 7/85) that unit clarification proceedings are not a proper means by which to seek merger of existing units unless one of the existing units is in conflict with an unequivocal statutory requirement. Here, the existing IBEW unit is in conflict with the statutory requirement that craft employes receive the unit determination vote noted above. Also, the employer in Shawano County had not disputed the propriety of either unit in the election proceedings which established those units. Here, the City has not previously had the opportunity to raise the anti-fragmentation and community of interest arguments it makes herein.