

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 CITY OF OCONOMOWOC : Case 1
 : No. 41440 ME-302
 Involving Certain Employes of : Decision No. 6982-B
 :
 CITY OF OCONOMOWOC : Case 2
 : No. 41346 ME-299
 ----- Decision No. 7170-C

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson Street, Milwaukee, Wisconsin 53202, by Ms. Marianne Goldstein Robbins, and 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 and Ms. Lisa M. Leeman, appearing for the City.

ORDER DENYING PETITION FOR REHEARING

The Wisconsin Employment Relations Commission having, on October 13, 1989, issued Findings of Fact, Conclusions of Law, Order Clarifying Bargaining Unit and Directing Election in the above matters wherein it was concluded that the continued existence of a separate blue collar bargaining unit consisting of certain City of Oconomowoc employes formerly employed by the City of Oconomowoc Utility Commission would unduly fragment bargaining units and was thus inappropriate; and wherein the Commission therefore ordered that the non-craft 1/ blue collar employes of the former Utility Commission be included in the existing blue collar unit of City employes represented by AFSCME, Local 1747; and IBEW, Local 2150, the collective bargaining representative of the former Utility Commission employes, having on November 2, 1989 filed a Petition for Rehearing pursuant to Sec. 227.49, Stats. contending the Commission's October 13 decision contained certain material errors of law and fact and had erroneously concluded that the existing IBEW unit could not be maintained; and the parties thereafter having filed written argument in support of and in opposition to the Petition, the last of which was received on November 20, 1989; and the Commission having considered the matter and concluded that the Petition should be denied because its decision did not contain any material errors of law or fact;

NOW, THEREFORE, it is

ORDERED 2/

That the Petition for Rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 1st day of December, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

(See Footnotes 1 and 2 on Page 2)

- 1/ Both the City (Tr. 8) and IBEW (Post hearing brief, p. 2) acknowledged that the craft employes in the former Utility Commission unit were entitled to determine whether they wished to exist in a separate unit for the purpose of union representation and our October 13, 1989 decision directed such an election. The election was conducted on November 16, 1989 but the ballots were impounded pending disposition of the petition for rehearing. Said ballots will be tallied on December 13, 1989 and a certification issued shortly thereafter.
- 2/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties 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.

227.53 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 paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING
ORDER DENYING
PETITION FOR REHEARING

We will not comprehensively respond to all matters raised in the Petition because we believe our October 13, 1989 decision adequately addresses the arguments raised by IBEW on rehearing. However, several matters warrant additional comment.

IBEW again asserts that our decision is at odds with prior precedent established in Shawano County, Dec. No. 22382 (WERC, 2/85) and relied upon in City of Milwaukee, Dec. No. 7432-A (WERC, 11/87) and City of Milwaukee, Dec. No. 6215-P,Q (WERC, 1/88). Footnote 15 in our original decision responds to this assertion. However, we further note that in the above cited decisions, the employer in the unit clarification petition was contending only that a combined unit would be "more" appropriate than the two existing units. Here, the City asserted and we concluded that the existing separate Utility Commission unit was rendered "inappropriate" by considerations of undue fragmentation once the City became the employer of the employees in question. 3/

We also continue to believe our decision is consistent with City of Clintonville, Dec. No. 19858 (WERC, 8/82). While page 13 of our original decision responds to this contention, we would again emphasize that unlike Clintonville, the former Utility Commission did not continue to exist as a separate and distinct department within the City. Exhibits 20, 21, 34a and 34b demonstrate that former Utility Commission employees are now scattered across the City's organizational chart and former IBEW unit members no longer have distinct supervision contrary to the IBEW contention in its petition. Furthermore, the existing City blue collar unit into which we placed the non-craft blue collar IBEW unit employees contains all other blue collar employees of the City, a "more" appropriate unit for inclusion than was present in Clintonville.

3/ It was also necessary to honor the requirement of Sec. 111.70(4)(d)2.a Stats. that the craft employees in the former IBEW unit be given a unit determination vote. Our Direction of Election refers to these employees as "all . . . electrical craft employees of the City . . ." because that description reflects the identity of the craft involved. While the record does not indicate that the City employs any other electrical craft employees, our unit description is appropriately broad enough to include any such positions consistent with our obligation to avoid undue fragmentation.

Adoption of IBEW's position herein would have potentially created a craft unit and a blue collar non-craft unit of former Utility employees in addition to the existing AFSCME blue collar unit. We acknowledge that if the IBEW position had been adopted and the craft employees elected to remain within the former Utility employee unit only two blue collar units would exist and that this same number of units will also exist under our decision if the craft employee elect to be a separate unit. However, the critical question for us was whether there could appropriately be two units of non-craft blue collar City employees. Consistent with our decision in City of Madison, Dec. No. 19584 (WERC, 5/82); City of Elkhorn, Dec. No. 16671 (WERC, 11/78) and City of Wisconsin Dells, Dec. No. 14041 (WERC, 10/75), we concluded that considerations of fragmentation required answering that question in the negative. We also note that our decision has the potential to create only one blue collar City unit if the craft employees elect to be included in the existing AFSCME unit.

Given the foregoing, we remain satisfied that our original decision was correct and that the Petition for Rehearing must therefore be denied.

Dated at Madison, Wisconsin this 1st day of December, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner