#### STATE OF WISCONSIN

BEFORE THE MISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CHAUFFLURS, THAMSTERS, WAREHOUSEMEN & : HELPERS LOCAL 446, AFFILIATED WITH THE : INTERNATIONAL BROTHERHOOD OF TEAMSTERS, : WAREHOUSEMEN AND HELPERS OF AMERICA :

Involving Certain Employes of

CITY OF MEDFORD

Case VII No. 14742 ME-667 Decision No. 10545

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S.

Williamson, Jr., and Mr. Gerald Allain, Business Representative,
for the Union.

Mr. Robert Brandner, City Attorney, for the Employer.

## DIRECTION OF ELECTION

Chauffeurs, Teamsters, Warehousemen & Helpers Local 446, affiliated with the International Brotherhood of Teamsters, Warehousemen & Helpers of America, having filed a petition with the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes among certain employes of the City of Medford, Wisconsin; and hearing on said petition having been held at Medford, Wisconsin, on August 17, 1971, Douglas V. Knudson, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, and being satisfied that a question has arisen concerning representation for certain employes of said Municipal Employer;

NOW, THEREFORE, it is

### DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this directive among all regular employes of the City of Reaford employed in the Department of Public Works, excluding craft and professional employes, confidential employes, supervisors and elected officials, who were employed by the Municipal Employer on September 28, 1971, except such employes as may prior to the elections quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of the employes employed in said voting group desire to constitute themselves a collective bargaining unit separate and apart from other employes of the employer, and (2) provided that the vote on the above question establishes a separate bargaining unit, whether a

majority of such employes voting desire to be represented by Chauffeurs, Teamsters, Warehousemen and Helpers Local 446, affiliated with the International Brotherhood of Teamsters, Warehousemen and Helpers of America, for the purpose of conferences and negotiations with the above mamed Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of September, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Вy

Morris Slavney, Chairman

Jos. B. Kerkman, Commissioner

#### STATE OF WISCONSIN

### BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & : HELPERS LOCAL 446, AFFILIATED WITH THE : INTERNATIONAL BROTHERHOOD OF TEAMSTERS, : WAREHOUSEMEN & HELPERS OF AMERICA :

Involving Certain Employes of

CITY OF MEDFORD

Case VII No. 14742 ME-667 Decision No. 10545

# MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

During the course of the hearing, the petitioner moved to amend its petition to exclude employes in the Division of Sewerage Treatment from the claimed appropriate unit consisting of all other employes of the Department of Public Works. The Municipal Employer contends that there is no separate Division of Sewerage Treatment within the Department of Public Works.

The director of the Public Works Department is directly responsible for the operation of a sewerage treatment facility in addition to other services such as streets and water. One employe is assigned full time to the Sewerage Treatment Plant. Unlike the other employes of the Department of Public Works, since he has no set work schedule and does not punch a time clock, but works whenever necessary including routine weekend checks of the plant, he receives a monthly salary. He does not receive overtime compensation so his week day hours of work vary. Said employe has received training for this work and has been certified by the State of Wisconsin as a qualified operator. His duties are separate and distinct from those performed by other employes of the Department of Public Works. There are very few temporary transfers either to or from the Sewerage Treatment Plant.

The Sewerage Treatment Plant Operator was including in the unit covered by the three previous contracts between the parties, the last of which expired on May 31, 1971.

In support of its position, the Union argues that the differences in working skills, physical location, duties and some of the conditions of employment warrant a conclusion that the Sewerage Treatment Plant constitutes a separate division or department within the meaning of Section 111.02(6) of the Wisconsin Employment Peace Act, as was found in a previous decision issued by the Commission. 1/

The Municipal Employer contends that because of the common supervision and the bargaining history, the Sewerage Treatment Plant Operator should be included in an over all unit of the Public Works Department.

<sup>1/</sup> City of Appleton, (7423) 1/66

The statutory criteria do not permit the Commission to rely on bargaining history as grounds for denying an election among employes in a separate division to determine whether they desire to constitute themselves a unit separate and apart from other units of the Employer.2/

A significant factor in the Commission's determination that a group of employes constitute a separate department or division within the meaning of the Statute is separate supervision. Unlike the City of Appleton case, in the instant matter there is common supervision of the entire Public works Department including the Sewerage Treatment Plant. In the West Bend Joint School District case issued June 2, 1971, the Commission found that the custodial and maintenance employes were employed in a separate department or division apart from the other employes including clericals. In a previous case involving the same employer issued on August 8, 1968, the Commission had found that the custodial and maintenance employes were not employed in a separate department or division. The basis for the difference in the two West Bend decisions resulted from the fact that subsequent to the initial decision, the primary supervision of the employes involved had been changed from that of being supervised by each principal at each school to separate departmental supervision.

The Commission is satisfied that the Sewerage Treatment Plant Operator is not employed in a single department or division of the Employer. His duties and skills while commanding the highest rate (when converted to an hourly basis) in the department do not constitute a craft classification, nor is the spread between his rate and next highest rate any greater than the spread between some of the other rates within the department. While he has a different location and some different conditions of employment, he is subject to the same supervision and many of the other same conditions of employment as the other employes within the Department of Public Works.

Dated at Madison, Wisconsin, this 30th day of September, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Jos. B. Kerkman, Commissioner