

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

Sometime prior to February 11, 1975, Donna J. Vanbuecken, Manpower Planner for Outagamie County and Administrator of the CETA program for said County, approached the City of Appleton, hereinafter the Municipal Employer, regarding possible employment of a number of individuals through the CETA program. On February 11, 1975, Vanbuecken notified the Municipal Employer that the Outagamie County Manpower Council decided to fill six Park Laborers positions requested by the Municipal Employer under the Public Works Program entitled "Adult Work Experience". Individuals for said positions were screened and certified by the Job Service Office in Menasha, Wisconsin. On February 24, 1975, six individuals went to work for the Municipal Employer's Parks and Forestry Department under the above CETA program. One of the above six individuals is now paid by the Municipal Employer and has been absorbed into its work force. Several individuals left the above program, either by mutual agreement of the parties or as a result of the Municipal Employer's dissatisfaction, and have since been replaced by other individuals. Three of the original CETA employes still worked for the Municipal Employer in their original capacity at the date of hearing. One additional Park Laborer position was funded by Outagamie County on approximately July 1, 1975, in the above program. All of the above Park Laborer positions were occupied at the date of hearing. Individuals occupying said positions were told at the time of their hire by representatives of the Municipal Employer that there was a good chance, if things worked out, that they would become permanent City employes. Although CETA's commitment to the individuals filling said positions extended only for one year, the positions themselves could be extended for a longer period, depending on the federal government's renewed funding of same.

Individuals performing work as Park Laborers under the aforementioned CETA program spend the vast majority of their employment doing the same kind of work as other employes in the collective bargaining unit. Said employes work the same daily and weekly schedule, take the same daily rest breaks, punch their time cards at the same time clock, and receive their daily assignments in the same manner as do the other employes. The above employes work with other employes who are in the bargaining unit and covered by a collective bargaining agreement between the parties. The federally funded Park Laborers are paid \$3.75 per hour for each eight-hour day worked, but do not receive any additional payment when they work more than eight hours per day. Time sheets are forwarded to the Manpower Services Department, from which the Park Laborers receive an Outagamie County pay check on a bi-weekly basis. Except for paid holidays, the federally funded Park Laborers have not received any of the fringe benefits provided in the contract between the parties. The Park Laborers are covered by Workmen's Compensation through the State of Wisconsin.

The Municipal Employer argues that Park Laborers were hired mainly because their wages were paid by Outagamie County, and further, that the Park Laborers are temporary employes without a reasonable expectancy of continued employment.

In the instant matter, the Park Laborers perform the same duties and work the same hours other employes of the Municipal Employer, although the Park Laborers are paid directly by Outagamie County and do not receive most of the fringe benefits afforded to the other employes. The Commission has held that employes will not be excluded from the col-

lective bargaining units solely on the basis of a different source of funding for said positions. 1/ In this instance, the federally funded Park Laborers' continued employment status depends upon the continuation of federal appropriations. Otherwise the positions are no different than positions previously included in bargaining units by the Commission. 2/ The Commission, therefore, concludes that the federally funded Park Laborer positions are properly included in the existing collective bargaining unit.

Two individuals occupied the positions of Forestry Technician. The Municipal Employer hired them as temporary employes and they were assigned to locate, check and condemn diseased elm trees and meet with the public to provide information relative to dutch elm disease. Said individuals performed work not normally done by bargaining unit employes. Their period of employment was seasonal, i.e., limited to the period of time when dutch elm disease is diagnosable. Said individuals were not employed by the Municipal Employer as of the date of the hearing nor were their positions filled by other employes. There was no indication that said employes would be hired again next season to perform the same work, nor did the record indicate that said positions would be filled again next year by the Municipal Employer. Thus, the Commission concludes that the existing collective bargaining unit does not at the present time include the Forestry Technician position since it has not been adequately demonstrated that the Forestry Technician position is a permanent seasonal position to be filled each year by the Municipal Employer.

Dated at Madison, Wisconsin this 12th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

1/ Vernon County (Sheriff's Department) (13451) 3/75; Weyerhaeuser Joint School District No. 3 (13395) 3/75.

2/ Adams-Friendship Area Schools (11881) 5/73. In fact, the instant matter is not readily distinguishable from a recent Commission case involving these same parties. See City of Appleton (13611-A) 7/75 and (13611-B) 8/75.