

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF JANESVILLE

Appearances:

Mr. Nicholas P. Jones, City Attorney, appearing on behalf of the
Municipal Employer.

Janesville Public Employees Local 523, AFSCME, AFL-CIO, hereinafter referred to as the Union and the City of Janesville, hereinafter referred to as the Municipal Employer, having jointly petitioned the Commission on February 3, 1977, to clarify whether the Municipal Employer had voluntarily recognized one overall or two separate collective bargaining units; and a hearing in the matter having been held on February 28, 1977, in Janesville, Wisconsin, before Dennis P. McGilligan, Hearing Examiner; and during the course of said hearing the Municipal Employer having raised an issue, without objection from the Union, as to whether the part-time bus drivers are included in said bargaining unit(s); and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following:

1. That the collective bargaining units voluntarily agreed to between Janesville Public Employees Local 523, AFSCME, AFL-CIO and the City of Janesville are:

- (a) All regular full-time City employees of the Department of Water, Streets, Parks, Forestry and Golf Courses; but excluding executive, supervisory, managerial and confidential employees, general foreman and garage supervisors and sewerage treatment plant operators; and
- (b) All regular full-time and regular part-time employees employed by the Employer in the Bus Department; except supervisory and confidential employees.

2. That the part-time bus drivers are included in the bargaining unit consisting of employes in the Bus Department.

Given under our hands and seal at the City of Madison, Wisconsin this 20th day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney -
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNITS

The Union is the voluntarily recognized bargaining representative of certain employees employed by the City of Janesville. On February 3, 1977, the Union and the Municipal Employer jointly filed a petition requesting clarification of the unit(s) which the Municipal Employer has voluntarily recognized. At the hearing the Municipal Employer raised an issue, without objection from the Union, regarding whether part-time bus drivers are included or excluded from said unit(s). A transcript was issued on March 31, 1977. The parties did not file briefs in the matter.

POSITIONS OF THE PARTIES:

The Union argues that the agreed to units for collective bargaining are:

- (1) All regular full-time City employees of the Department of Water, Streets, Parks, Forestry and Golf Courses; but excluding executive, supervisory, managerial and confidential employees, general foreman and garage supervisors and sewerage treatment plant operators; and
- (2) All regular full-time and regular part-time employees employed by the Employer in the Bus Department; except supervisory and confidential employees.

The Union contends that said units are recognized in the 1977 labor agreement, and were likewise recognized as two separate units by the Municipal Employer on a voluntary basis in 1971. It also argues that the labor agreement between the parties for 1973 refers to two separate bargaining units. In addition the Union maintains that the employees of the Bus Department have different conditions of employment and a separate community of interest from other employees represented by the Union.

Finally, the Union argues that the part-time bus drivers are part of the voluntarily recognized bargaining unit; that the Union has not ceased to represent said employees, and that therefore the Municipal Employer cannot now unilaterally remove said employees from the bargaining unit.

The Municipal Employer claims that the Union seeks to negate the prior agreement of the parties by creating two units where the Municipal Employer previously voluntarily recognized one unit. In this regard the Municipal Employer relies on Waukesha County (14830) 8/76, wherein it states that "generally, in a unit clarification proceeding, the Commission will not change the complement of the bargaining unit which was voluntarily agreed upon as being appropriate, except where the complement of the unit contravenes the provisions of the Municipal Employment Relations Act." The Municipal Employer also relies on Milwaukee Board of School Directors (13134-A) 1/76, wherein the Commission refused to accrete petitioned for employees to the established bargaining unit where the parties voluntarily previously agreed to the composition of the unit, where that agreement was not repugnant to MERA, and in the absence of any intervening events which materially affect the status of those employees.

The Municipal Employer states that there has been one unit as reflected in the collective bargaining agreements in existence since 1971 and that said unit is practical and not contrary to the provisions of MERA. The Municipal Employer argues that to split one unit into two separate units would contravene the anti-fragmentation mandate set forth in MERA. The Municipal Employer adds that bargaining since 1971 has resulted in one contract for all departments represented by Local 523.

In view of all of the above, the Municipal Employer would have the bargaining unit read as follows:

"All regular full-time employees of the Departments of Water, Streets, Parks, Bus, Forestry and Golf Courses; but excluding executive, supervisory, managerial and confidential employees, general foreman and garage supervisors and sewerage treatment plant operators."

In addition, the Municipal Employer argues that the part-time bus drivers should be excluded from the aforementioned bargaining unit, because the parties have not bargained concerning them since 1974; the Municipal Employer has set conditions of employment for them unilaterally since that time; and as a practical matter they are no longer recognized as part of the unit. The Municipal Employer argues that this was a voluntary decision by the parties and according to the previous two cases cited should not be disturbed unless contrary to MERA.

DISCUSSION:

Generally, in a unit clarification proceeding, the Commission will not change the complement of the bargaining unit which was voluntarily agreed upon as being appropriate, 1/ except where the complement of the unit contravenes the provisions of the Municipal Employment Relations Act. 2/ The primary issue herein is whether the Municipal Employer recognized one unit, which included the Bus Department employees, or two separate units, one unit consisting solely of Bus Department employees, when it voluntarily recognized the Union as bargaining representative of certain of its employees in 1971.

The parties are in agreement with the general statement of Commission policy set out above, and the cases relied upon by the Municipal Employer in support of its position follow that line of reasoning. However, the real dispute between the Union and the Municipal Employer is over what unit(s) was (were) recognized voluntarily by the City of Janesville in 1971.

On January 31, 1977, representatives of the parties executed a collective bargaining agreement, effective from January 1, 1977 and at least through December 31, 1977. The parties affixed signatures on page 15 of the 1977 agreement. Article I entitled "Recognition" in Section 1 provided as follows:

"The City recognizes the Union as the exclusive bargaining agent for all regular full-time city employees of the Departments of Water, Streets, Parks, Forestry and Golf Courses, but

1/ City of Cudahy (12997) 9/74.

2/ City of Greenfield (13590) 4/75.

excluding executive, supervisory, managerial, and confidential employees, general foreman and garage supervisors and sewerage treatment plant operators, in all matters relating to wages, hours and conditions of employment."

Following the signature page, there consisted two pages (16 and 17) containing the "Pay Ranges-Classification-Wage Rates", and the classifications in the various pay ranges as follows:

"1977

APPENDIX A

Pay Ranges-Classification-Wage Rates

<u>Range</u>	<u>Starting</u>	<u>After 6 Months</u>	<u>After 18 Months</u>	<u>After 30 Months</u>
I	4.29	4.45	4.60	4.77
II	4.45	4.60	4.77	4.97
III	4.60	4.77	4.97	5.16
IV	4.77	4.97	5.16	5.35
V	4.97	5.16	5.35	5.56
VI	5.06	5.26	5.45	5.66
VII	5.16	5.33	5.56	5.78

Range I

Laborer I

Range II

Laborer II

Grounds Maintenance I

Range III

Laborer III

Grounds Maintenance II

Waterworks Operator I

Rubbish Pickup Driver

Meter Reader I

Forestry Groundsman

Range IV

Equipment Operator I

Sewer Maintenance I

Storekeeper I

Sweeper Operator I

Waterworks Operator II

Sanitary Equipment Operator

Grounds Maintenance III

Water Meter Reader II

Water Serviceman

Water Meter Repairman

Automotive Serviceman

Forestry Treeman

Sign Painter I"

Range V

Leadman I

Equipment Operator II

Welder I

Mechanic I

Waterworks Operator III

Water Meter & Service Spvr.

Sign Painter II

Range VI

Greenskeeper I

Leadman II

Waterworks Operator IV

Welder II

Mechanic II

Equipment Operator III

Sewer Maintenance II

Range VII

Greenskeeper II

Waterworks Operator V

Working Foreman

Water Pump Operator

Following page 17 there was another document consisting of pages 18, 19 and 20 as follows:

"ADDENDUM TO
DEPARTMENT OF PUBLIC WORKS
LABOR AGREEMENT
Between
AFSCME, LOCAL 523 AND
CITY OF JANESVILLE, WISCONSIN

This addendum shall be effective for the term of the Agreement and shall affect the main body of the Agreement only with respect to its application to the bargaining unit represented by Local 523, known as the Bus Employees or Bus Department employees, which is all regular full-time and regular part-time employees employed by the Employer in the Bus Department except supervisory and confidential employees.

The main body of the Agreement shall apply to the bargaining unit above referred to as Bus Employees in all respects except as modified hereinafter by this addendum.

Article I, Section 1
shall refer to the bargaining unit herein described.

Article I, Section 2
shall be modified to (Maximum number two).

Article IV, Section 1
shall be amended to recognize variations from this provision as set forth in Executive Memos of record.

Article IV, Section 2
shall be amended for the life of this addendum, to restrict interdepartmental mobility with respect to posting for vacant jobs.

Article V, Section 3
shall be recreated to read:
'The specific arrangement and adjustment of the hours of the work day and work week shall be the function of the department head. Employees may be required to work any day of the week on a regular schedule and any period of a work day on a regular schedule. Including regularly scheduled routes or work assignments, as well as check-in, check-out times, full-time employees shall be guaranteed at least 80 hours of work in any two-week pay period.'

Article V, Section 4
shall be recreated to read:
'Employees shall receive time-and-one-half their hourly rate of pay for all time worked in excess of their regular schedule during weeks which contain holidays or in excess of 80 hours in any pay period (two weeks).'

Article V, Section 8
shall be created anew to read:
'Regular full-time employees shall be offered first opportunity to work all openings in regular year-round routes and charter runs.

Article VI, Section 3

shall be amended by changing the second sentence to read:

'Employees shall be allowed to select their vacation according to their service seniority.'

Article VII, Section 5

shall be created anew to read:

'When an employee is regularly scheduled to work and works on a day recognized as a paid holiday, he shall receive eight (8) hours of pay at his straight time hourly rate in addition to the pay he receives for the time actually worked. This additional eight (8) hours of pay shall not be included in any computation of overtime.'

Article VIII, Section 5

shall be recreated to read:

'Sick leave will be charged to employees in amounts of time actually lost.'

Article VIII, Section 7

shall be recreated to read:

'Employees shall, as a condition of the receipt of sick leave pay, be required, when possible, to inform the Employer of their required absence one (1) hour prior to starting time.'

Article X, Section 4 shall be created anew to read:

'Clothing Allowance.

The City will pay one-half (50%) of certain uniform costs, which include only trousers, jacket, cap and initial issue of eight (8) shirts. The City further will pay one-half the replacement cost of uniform shirts, not to exceed \$15 annually. The item being replaced must be turned in before the city shall make such payment. In addition, the City will pay for dry cleaning and laundering of uniforms up to \$85 per driver per year. Garagemen who drive part-time shall be entitled to these benefits prorated on the basis of time spent driving. Uniforms will be worn as the Superintendent may direct.'

Article X, Section 5

shall be created anew to read:

'In the event that there shall be contemplated a change of schedules or of hours of work, the parties shall meet for the purpose of finding mutually satisfactory adjustments. Should such changes result in a layoff of any employee, his seniority rights shall be preserved for a period of one year from date of layoff provided he shall return to work in response to any call made by the Employer.'"

Reviewing the various provisions cited above, it should be noted that Article I, Section 1 of the primary agreement reflects the unit to consist of "all regular city employees of the Departments of Water, Streets, Parks, Forestry and Golf Courses" with the usual exclusions. It is further to be noted that prior to the addendum appearing on page 18 of the document, more specifically page 17, setting forth the various classifications in the various pay ranges, that neither regular full-time nor part-time employees employed by the employer in the bus department are included in the various classifications assigned to the various pay ranges. It should be further noted that the addendum with

reference to the bus department employees specifically sets forth that "This addendum shall be effective for the term of the Agreement and shall affect the main body of the Agreement only with respect to its application to the bargaining unit represented by Local 523, known as the Bus Employees or Bus Department employees, which is all regular full-time and regular part-time employees employed by the Employer in the Bus Department except supervisory and confidential employees." Further, on page 20 of the 1977 agreement which contains the signature page for the addendum, commencing on page 18, the following provision is included on said page:

"AMENDMENTS TO APPENDIX A

1. Appendix A shall cover all employees of this bargaining unit.
2. Bus Department mechanics shall be classified as Mechanic I in Pay Range V. Drivers shall be classified as Equipment Operators II in Pay Range V. Garagemen shall be classified as Automotive Servicemen in Pay Range IV."

Thus it is apparent from the clear language of the provisions which appear in the 1977 collective bargaining agreement, and which have been cited above, indicates that bus department employees, both regular full-time and regular part-time, have been considered, and are presently considered, to be included in a unit separate and apart from employees employed in the Water, Streets, Parks and Forestry Departments, as well as Golf Courses.

Dated at Madison, Wisconsin this 20th day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney

Morris Slavney, Chairman

Herman Torosian

Herman Torosian, Commissioner

Charles D. Hoorstra

Charles D. Hoorstra, Commissioner