

**BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

CITY OF EVANSVILLE

**Case VI**  
**No. 23233 ME-1560**  
**Decision No. 16671**

Bill Ensor, hereinafter Petitioner, on June 28, 1978, filed a petition with the Wisconsin Employment Relations Commission for an election among certain employees employed by the City of Evansville, hereinafter the City; hearing in the matter was held in Evansville, Wisconsin on August 22, 1978, Sherwood Malamud, Examiner, present; during the course of said hearing Teamsters Local Union No. 579 was permitted to intervene in this proceeding on the grounds that it presently represents the unit of employees of the Municipal Employer; the parties did not submit briefs; and the Commission being fully advised in the premises makes and issues the following

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in the Public Works, Public Safety, and Water and Light Departments of the City of Evansville are all employees of the City.

7. The nonclerical employees employed in the Water and Light Department of the City of Evansville share a sufficient community of interest with the nonclerical non-law-enforcement employees in the City's Public Works and Public Safety Departments to be included in one bargaining unit with such employees. Establishment of a separate unit of Water and Light Department employees would constitute undue fragmentation of bargaining units in view of the size of the total municipal work force of the City.

Based upon the above and foregoing Findings of Fact, the Commission issues the following

#### CONCLUSIONS OF LAW

1. "All regular full-time nonclerical employees employed in the Water and Light Department of the City of Evansville" is not an appropriate bargaining unit within the meaning of Section 111.70(4)(d)2.a., Stats.

2. A question of representation exists with respect to the bargaining unit described in Finding 4, above.

Upon the basis of the foregoing Findings and Conclusions, the Commission issues the following

#### DIRECTION OF ELECTION

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this directive in the unit consisting of all regular full-time employees of the Water and Light Department of the Department of Public Works and all regular full-time non-uniformed employees of the Public Safety Department excluding supervisors, confidential employees and clerical employees who were employed by the City of Evansville on November 15, 1978, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees casting valid ballots desire to be represented by Bill Ensor, or by Teamsters Local Union No. 579, or by no representative for the purposes of collective bargaining with the City of Evansville with respect to wages, hours and conditions of employment.

Given under our hands and seal at the  
City of Madison, Wisconsin this 15th  
day of November, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman  
Herman Torosian  
Herman Torosian, Commissioner  
Marshall L. Gratz  
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

Positions of the Parties

Petitioner seeks to terminate Local 579's exclusive representation of the existing multi-department unit described in Finding 4 and to establish himself as the exclusive representative of that portion of said unit employed in the Water and Light Department of the City of Evansville or of whatever other unit including such employees the Commission deems appropriate. The three-way grouping of the employees in the existing unit for voting purposes that is proposed hereby by petitioner was approved by the Commission in a representation proceeding in 1969. 1/ The results of that proceeding were superceded by a bargaining order in the multi-department unit. 2/ Petitioner argues that bargaining efforts on behalf of Water and Light Department employees are hampered by their inclusion with employees of the other two departments especially because, unlike the other two departments, Water and Light generates its own revenues from fees and does not rely upon tax dollars for its funding.

Both the City and Local 579 argue that the Water and Light Department employees are employees of the City and that the statutory anti-fragmentation policy 3/ requires that the requested election be conducted in the multi-department unit not in existence.

Discussion

Petitioner's request to divide the existing unit along departmental lines will be rejected unless either the Water and Light Department of the City of Evansville is a separate employing entity from the City or the regular full-time nonclerical employees in that department constitute an appropriate bargaining unit separate from such employees in the Public Safety and Public Works Departments.

Certain record facts tend to support the applicability of the separate employing entity theory herein. The Water and Light employees at issue are supervised by different individuals than those supervising the other employees in the existing unit. Water and Light's operations are, for the most part, physically separate from the other departments. It maintains separate offices in City Hall space rented from the City. It also has a separate shop/garage and its own vehicles, which are maintained, for the most part, without participation of the City's mechanics who work in the City garage across the street. The Water and Light books are kept and audited separately from those of the other City departments. At least some of the decisions governing Water and Light's employee relations and operations are made by a three-member "Water and Light Committee" appointed by the Mayor and approved by the City Council. And

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- 1/ City of Evansville (9334) 11/69.
  - 2/ City of Evansville (9334-C and 9440-A) 3/71, aff'd by WERC (9334-E) 7/71 and by Wis. Sup. Ct. in 69 Wis. 2d 140 (1975).
  - 3/ Section 111.70(4)(d)2.a., Stats., which provides, in part, as follows:

"The commission shall determine the appropriate bargaining unit for the purpose 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."

finally, unlike other departments, Water and Light's expenditures are limited to its revenues from customers; it serves customers of six townships outside of the City limits as well as City residents; its rates are subject to State Public Service Commission approval; and it holds and pays City and State taxes on properties of its own.

However, other record facts tend to make the separate employing entity theory inapplicable herein. For example, we find from the record as a whole that the City Council (consisting of six members) has the ultimate authority to make the decisions governing employe relations and operations of the Water and Light Department. While it has delegated to the Water and Light Committee some of the decisions of that nature, the Council itself continues to review and act upon committee recommendations regarding major nonroutine matters such as equipment and vehicle purchasing, utility rate modification requests, and the terms of collective bargaining agreements reached with Teamsters Local 579 as a result of bargaining with respect to the existing multi-department unit. Significantly, the Water and Light Committee is currently composed exclusively of three members of the Council, parallel to the composition of the City Council committees overseeing the Public Safety and Public Works Departments. The City Clerk, City Treasurer, and Water and Light Department Office Manager are one and the same individual. Furthermore, at least some of the limited services provided to Water and Light by City employees employed in other Departments have not been paid for by Water and Light. One example of such unreimbursed services is after-hours and weekend telephone answering by Public Safety Department dispatchers.

Upon consideration of the foregoing facts, we find that effective control of the Water and Light Department decision-making remains in the City Council rather than in an independent body 4/, such that the Water and Light Department ought not be deemed a separate employing entity from the City. Accordingly, the Water and Light Department employees are deemed employed by the City.

We turn now to the appropriateness of a separate unit of City employees consisting of the nonclericals in its Water and Light Department. Nothing in the record distinguishes those employees from the other employees 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, nonprofessional, blue-collar personnel. A review of the employee complements in each departmental grouping within the existing unit reveals three employees in Public Safety, seven in Public Works, and four in Water and Light, for a total of fourteen. Especially in view of those small numbers, neither the nonreliance 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-

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4/ Compare, Village of Hales Corners (15229-A) 4/78 and City of Sparta Water Utility (12912) 8/74 with the instant fact situation.

department unit bargaining are sufficient (either alone or in combination) to overcome the anti-fragmentation policy expressed in MERA. 5/ Hence, we have concluded that the proposed separate unit would not be appropriate, and we have directed an election in the existing recognized unit. 6/

Dated at Madison, Wisconsin this 15th day of November, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
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5/ See Note 3, above.

6/ Since no party has sought to expand the existing unit to include other employe groups, we have determined herein neither the necessity nor the propriety of including any other such group(s) in the existing unit.