

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----	:	
In the Matter of the Petition of	:	Case XXXII
MILWAUKEE DISTRICT COUNCIL 48 and	:	No. 16854 ME-950
its affiliated LOCAL 305	:	Decision No. 12032-C
Involving Certain Employees of	:	Case XLVI
CITY OF WAUWATOSA	:	No. 23118 ME-1551
-----	:	Decision No. 17241
In the Matter of the Petition of	:	Case XLVII
MILWAUKEE DISTRICT COUNCIL 48 and	:	No. 23119 ME-1552
its affiliated LOCAL 305	:	Decision No. 17242
Involving Certain Employees of	:	Case XLVIII
CITY OF WAUWATOSA	:	No. 23135 ME-1553
-----	:	Decision No. 17243
Involving Certain Employees of	:	Case XLIX
CITY OF WAUWATOSA	:	No. 23141 ME-1555
-----	:	Decision No. 17244

Appearances:

Podell & Ugent, Attorneys at Law, by Ms. Nola J. Hitchcock Cross,
appearing on behalf of the Union.
Mr. Earl R. Gregory, Staff Representative, District Council 48,
appearing on behalf of the Union.
von Briesen & Redmond, S.C., Attorneys at Law, by Mr. Donald J.
Cairns, appearing on behalf of the Municipal Employer.
Mr. David Moore, Employee Relations Director, City of Wauwatosa,
appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DIRECTION OF ELECTIONS

Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 305 filed, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act (MERA), a petition for clarification of a bargaining unit consisting of certain custodial, maintenance and other non-represented blue collar employees of the City of Wauwatosa, on March 29, 1978. A hearing on said petition was scheduled to be held before Robert McCormick, a member of the Commission's staff, but in the course of the hearing the parties stipulated to an election among the following employees:

All regular full time and regular part time custodial employees (blue collar) employed by the City of Wauwatosa in the City Clerk Department and Police Department, but excluding supervisors and all other employees.

Pursuant to the above stipulation the Commission ordered an election to be held. However, on June 8, 9 and 13, 1978, the Union filed separate petitions for elections among the following employees: (1) all professional employees in the Engineering Department; (2) all professional employees in the Health Department; (3) all technical employees in the Engineering Department; and (4) all other employees presently unrepresented. Subsequent to motion filed by the City and as a result of a possible conflict in the units described in the above mentioned petitions, the Commission vacated its order directing an election among the custodial employees and consolidated all five of the above petitions and appointed as Hearing Examiner for the consolidated cases, Stanley H. Michelstetter II, a member of the Commission's staff. In the course

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

of the prehearing conference and the hearing, held on September 22, 1978, the parties stipulated to elections among certain employees of the City as described in the following Direction of Election. The Commission, having considered the evidence and arguments of the parties regarding the remaining disputed matters, and being satisfied that questions concerning the appropriate bargaining units, unit inclusions, and representation have arisen involving certain employees of the Municipal Employer named above, makes and issues the following

FINDINGS OF FACT

1. Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 305, hereinafter the Union, is a labor organization within the meaning of Section 111.70(1)(i) of the Municipal Employment Relations Act (MERA) with their principal address at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

2. The City of Wauwatosa, hereinafter the City, is a Municipal Employer within the meaning of Section 111.70(1)(a) of the MERA with its principal address at 7725 West North Street, Wauwatosa, Wisconsin 53213.

3. The parties dispute: (1) the unit allocation of nine employees, namely: four employees occupying the position of Public Works Inspector; two employees occupying the position of Civil Engineering Aide III (Field), one Civil Engineering Aide II, one Civil Engineering Aide I, and one Civil Engineering Aide III (Office); (2) whether the position of Dental Hygienist is a professional position, and; (3) whether the position of Civil Engineer III and Field Supervisor is a supervisory position.

4. The Union contends that the positions in paragraph 3 (1) above are properly included within the "blue collar" unit whereas the City argues they are most appropriately within the "white collar" unit.

5. The Public Works Inspectors inspect contractors' construction work in order to evaluate conformance with plans, specifications, State codes and City ordinances. Typically, the Public Works Inspector will perform the following duties: inspect construction of bridges, buildings, sanitary sewers, storm sewers, small drainage structures, grading and landscaping, asphalt and concrete paving, concrete curb and gutter, sidewalks, driveways, service laterals and other types of construction work to assure that procedures and materials comply with plans and specifications, measure distances to verify accuracy of dimensions and evaluations; prepare samples for laboratory testing; interpret plans and specifications; keep records of materials received and used; maintain logs of construction and inspection activities; may occasionally be required to perform limited technical work in connection with given engineering field surveys, make simple routine calculations involving the reduction and plotting of field notes and surveys and do ordinary drafting in an engineering office; and perform such other related work as may be assigned. The primary characteristic of such work is that it requires the Public Works Inspector to perform repetitive manual tasks in an outdoor construction site work environment.

6. The Civil Engineering Aide III (Field) is responsible for a surveying field party and performs the following tasks: the instrument work for surveying such as topographic, cross sections, travers, property lines, and bench levels; establishing line and grade for grading work, street construction, sewer and water main construction, building layout, and related work; making the computations relating to various surveying problems; keeping legible and permanent surveying notes on work done; inspecting the construction of paving, sewers, water mains, and similar projects; and, performing other related work as required.

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

The Civil Engineering Aide II would perform the following tasks as a member of the survey crew: hold end of surveying chain or tape in measuring distances; hold level rod and adjust and read target in obtaining and establishing elevations; dig and search for survey monuments; drive hubs and stakes to indicate points and grades; cut brush and undergrowth from line of sight of instruments; occasionally use transit and level in simple operations; clean and care for surveying instruments and tools; take and record field notes for surveys; index and file field notes and drawings; make simple routine calculations in an engineering office in connection with the reduction and plotting of field notes and surveys; do ordinary drafting in an engineering office such as transferring level and cross section notes to plan and profile sheets or complete plans by inking or lettering; inspect construction projects such as paving, curb and gutter, sidewalk, sewer and water and others requiring conformity with plans and specifications; and do related work as required.

The Civil Engineering Aide I would perform the following tasks as a member of the survey crew: hold end of surveying chain or tape in measuring distances; use line staff to indicate a point, or place staff where indicated by the instrument man; uses level rod and adjusts and reads targets in obtaining existing elevations, or in establishing elevations; digs and searches for survey monuments; drive hubs and stakes to indicate points and grades; cut and remove brush and undergrowth from the instrument man's line of sight; occasionally uses transit or level in simple operations; clean and care for surveying instruments and tools, and performs related work as required.

The predominate characteristic of the work performed by the Civil Engineering Aides (Field) III - I, is the repetitive manual nature of the work performed in an outdoor construction site work environment.

7. The wages paid to the employees in the disputed positions, the hours worked and the supervision received do not distinguish said employees from those included in either the "blue collar" or "white collar" units.

8. The duties, skills and working conditions of the disputed positions, with the exception of the Civil Engineering Aide III (Office), as described in Finding of Fact No. 9 below, are more similar to the duties skills and working conditions shared by those employees in the "blue collar" unit than those employees in the "white collar" unit.

9. The City currently employs one Civil Engineering Aide III (Office) whose duties include the following: check, reduce and plot field notes; interpret design work from system plans, sketches, and street grades, and incorporate the information into finished plans; revise and ink details of plats and maps; make tracings; draw new quarter-section and subdivision maps; make engineering measurements with a planimeter; compute amounts of assessments for public works improvements and make other computations of moderate difficulty; operate a print machine; index and file drawings and specifications; and do other related work as required.

10. The duties, skills, and working conditions of the Civil Engineering Aide III (Office) are more similar to those possessed by the employees within the white collar unit than those in the blue collar unit.

11. The City employs, among others, one dental hygienist whose functions include the following: (1) the examination of school children's teeth and instructions to those children regarding proper dental care; (2) communication with the parents of school children regarding necessary

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

dental care; (3) preparation and delivery of lectures to the community regarding dental care; (4) the maintenance of records necessary to accomplish the above tasks; and (5) the compilation of periodic statistical reports.

12. As a condition of employment for said position, the City requires of the incumbent a high school diploma, successful completion of an accredited course for dental hygienists, and possession of a Dental Hygienist's Certificate from the Wisconsin Board of Dental Examiners.

13. The incumbent dental hygienist, Ms. Patricia Turzinski, has occupied that position for nine years. In that time she has completed an additional 20 hours of academic course work in the areas of community health, psychology and sociology although such course work is not required as a condition of continuing employment by the City.

14. The City employs a Civil Engineer III and Field Supervisor -- a position which is currently occupied by Mr. Kenneth Balogh. The supervisory responsibilities of said position include: (1) the direction and assignment of the activities performed by nine employees in the "Field Section" which is comprised of the Public Works Inspectors and the Civil Engineering Aides; (2) the verification of the accuracy of time slips submitted by the Field Section employees; (3) the coordination and review of requests for vacation and sick leave made by the Field Section employees; and (4) the training of new employees as well as the assignment of training responsibilities to others. The City is subject to Civil Service Commission determination of disciplinary actions taken against its employees and consequently Balogh does not have the independent authority to hire, transfer, suspend, lay off, recall, promote, discharge or otherwise adjust the grievances of any employees of the City. Balogh does have the authority to impose discipline without prior approval in the form of warnings and has done so in the past.

15. Balogh is paid approximately \$140 per month more than Civil Engineer III's and spends on the average 3.5 hours of his 7.5 hours directing and assigning the work of the Field Section employees.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That Ms. Patricia Turzinski, occupying the position of Dental Hygienist is not an employee engaged in work "requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or hospital . . ." as required by Section 111.70(1)(L) of the Municipal Employment Relations Act and therefore, is not a professional employee as defined by the Act.

2. That Mr. Kenneth Balogh, Civil Engineer III and Field Supervisor, is clothed with sufficient duties and responsibilities to constitute such individual as a supervisor, and therefore, such individual is not a "municipal employee" within the meaning of Section 111.70 of the Municipal Employment Relations Act.

3. That all regular full-time, regular part-time and seasonal employees of the City of Wauwatosa employed in the Street Department, Mechanical and Maintenance Department, Electrical Department, Water Department, Park and Recreation Department, all Police Parkettes, Public Works Inspectors, Civil Engineering Aides III (Field) through I, and custodians in the City Clerk Department and Police Department, but excluding craft employees occupying the Electrician and Sign Painter

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

Classifications, executives, the following supervisors: General Street Foreman, Assistant Street Foreman, Park Superintendent, Forestry Foreman and Plant Foreman, and all clerical employees of the above departments currently represented by the Union as a part of the above unit, should such clerical employees vote for inclusion in Group No. 1 as provided in the following direction of election, constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

4. That all regular full-time and regular part-time unrepresented clerical and administrative employees of the City of Wauwatosa, including those clerical employees currently represented by the Union in the unit described above, should they choose to be included in the clerical unit as described herein, and the Civil Engineering Aide III (Office), excluding supervisory, confidential, managerial professional and craft personnel, constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DIRECTION OF ELECTIONS

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 30 days from the date of this Directive in the following voting groups for the following stated purposes:

Voting Group No. 1

All regular full-time and regular part-time clerical employees in the employ of the City of Wauwatosa currently represented by Milwaukee District Council 48, and its affiliated Local 305, excluding professional employees, managerial, supervisory and confidential employees, who were employed on August 29, 1979, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining: (1) whether a majority of the employees in said voting group desire to be included in the bargaining unit described as "all regular full-time and regular part-time unrepresented clerical and administration employees of the City of Wauwatosa, excluding supervisory, confidential, managerial, professional and craft employees; and, (2) whether a majority of such employees voting desire to be represented by the Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 305, for the purpose of collective bargaining with the City of Wauwatosa on questions of wages, hours and conditions of employment. 1/

Voting Group No. 2

All regular full-time and regular part-time custodial employees, Public Works Inspectors, and Civil Engineering Aides (blue collar) employed by the City of Wauwatosa in the City Clerk Department and Police Department, but excluding supervisors and all other employees, who were employed on August 29, 1979, except such employees as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employees desire to be represented by District Council 48 and its affiliated Local 305, for the purpose of collective bargaining with the City of Wauwatosa, and further, should the required number of employees vote in favor of such representation, then said employees shall be included in

1/ Should the currently represented clerical employees vote against inclusion in the bargaining unit described as Voting Group No. 3, then their representation ballots will be impounded and they shall continue to be represented by the Union in the existing unit.

the overall "blue collar" bargaining unit consisting of "all regular full-time, regular part-time and seasonal employees of the City of Wauwatosa employed in the Streets Department, Mechanical and Maintenance Department, Electrical Department, Water Department, Park and Recreation Department, and all Police Parkettes employed by the City of Wauwatosa, but excluding craft employees occupying the Electrician and Sign Painter classifications, executives, and the following supervisors: General Street Foreman, Assistant Street Foreman, Equipment Foreman, City Electrician, Water Superintendent, Water Foreman, Park Superintendent, Forestry Foreman, and Incinerator Plant Foreman."

Voting Group No. 3

All regular full-time and regular part-time clerical and administration employees ("white collar") of the City of Wauwatosa, excluding supervisory, confidential, managerial, professional and craft employees, who were employed on August 29, 1979, 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 voting desire to be represented by Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 305, for the purpose of collective bargaining with the City of Wauwatosa on questions of wages, hours and conditions of employment.

Voting Group No. 4

All regular full-time and regular part-time professional engineering employees in the employ of the City of Wauwatosa, excluding all other employees, managerial, supervisory and confidential employees, who were employed on August 29, 1979, except such employees as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining: (1) whether a majority of the employees in said voting group desire to be included in the bargaining unit described in Voting Group No. 2; and, (2) whether a majority of such employees voting desire to be represented by Milwaukee District Council 48 and its affiliated Local 305, AFSCME, AFL-CIO, for the purposes of collective bargaining with the City of Wauwatosa on questions of wages, hours and conditions of employment.

Voting Group No. 5

All regular full-time and regular part-time Health professional employees of the City of Wauwatosa, excluding all other employees, managerial, supervisory and confidential employees, who were employed on August 29, 1979, except such employees as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining: (1) whether a majority of the employees in said voting group desire to be included in the bargaining unit described in Voting Group No. 2; and, (2) whether a majority of such employees voting desire to be represented by Milwaukee District Council 48 and its affiliated Local 305, AFSCME, AFL-CIO, for the purposes of collective bargaining with the City of Wauwatosa on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 29th
day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

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

Prior to March 27, 1978 there existed a collective bargaining unit of municipal employees of the City described as "all regular full-time regular part-time and seasonal employees of the City of Wauwatosa employed in the Street Department, Mechanical and Maintenance Department, Electrical Department, Water Department, Park and Recreation Department, and all Police Parkettes employed by the City of Wauwatosa, but excluding craft employees occupying the Electrician and Sign Painter Classifications, executives, and the following supervisors: General Street Foreman, Assistant Street Foreman, Park Superintendent, Forestry Foreman and Plant Foreman", hereinafter referred to as the DPW unit. On March 27, 1978, the Union filed a petition for unit clarification with the Commission requesting that all previously unrepresented, custodial, maintenance and "blue collar" employees of the City be included within the above unit. As a result of the hearing conducted on said petition, on June 22, 1978, 2/ the Union and the City agreed to an election among "all regular full-time and regular part-time custodial employees (blue collar) employed by the City of Wauwatosa in the City Clerk Department and Police Department" in which the voters were to choose between representation by the Union as part of the DPW unit and no representation. Pursuant thereto, the Commission issued a direction of election (City of Wauwatosa, 12032-A (6/78), Case XXXII.) On June 8, 1978 the Union filed two separate petitions for election among "all technical employees in the Engineering Department," 3/ and "all professional employees in the Engineering Department." 4/ On June 9, 1978, the Union filed a petition for an election among "all other employees presently unrepresented, excluding confidential and supervisory or managerial." 5/ On June 13, 1978 the Union filed a petition for an election among "all professional employees in the Health Department such as RN's, Dental Hygienist, etc." 6/ Subsequent to motion filed by the City on July 14, 1978, the Commission vacated its direction of election ordered in Case XXXII 7/ and consolidated the above cases for hearing before Stanley H. Michelstetter II, a member of the Commission's staff. A prehearing conference was held and, on September 22, 1978 a hearing on outstanding issues was held.

The parties stipulated to elections in the following four units:

1. All regular full-time and regular part-time professional engineering employees of the City of Wauwatosa, excluding supervisory, managerial, confidential and all non-professional personnel;

-
- 2/ Although the parties originally stipulated on May 11, 1978 to an election and subsequent WERC clarification they amended said stipulation on June 22, 1978.
 - 3/ Designated as WERC Case XLVI.
 - 4/ Designated as WERC Case XLVII.
 - 5/ Designated as WERC Case XLVIII.
 - 6/ Designated as WERC Case XLIX.
 - 7/ The Commission found that the filing of the petitions in Cases XLVI and XLIX created a question of the appropriateness of the unit as described in XXXII.

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

2. All regular full-time and regular part-time health professional employees of the City of Wauwatosa, excluding supervisory, managerial, confidential and non-professional personnel.
3. All regular full-time and regular part-time unrepresented clerical and administration employees of the City of Wauwatosa, excluding supervisory, confidential, managerial, professional and craft personnel (hereinafter referred to as the "white collar" unit; and
4. All regular full-time and regular part-time custodial employees (blue collar) employed by the City of Wauwatosa in the City Clerk Department and Police Department, but excluding supervisors and all other employees, who were employed on May 11, 1978, as provided in the Direction of Election in Case XXXII. 8/

We find nothing in the above stipulations contrary to the purposes of the Municipal Employment Relations Act and accordingly direct elections in the above voting units.

Subsequent to the stipulation of the parties regarding the definition of the bargainin units, the following issues remained and were presented before the Examiner for determination by the Commission:

1. In which of two units, broadly described as "blue collar" and "white collar" are the following positions to be included: Public Works Inspector, Engineering Aide III (Office), Engineering Aide III (Field), Engineering Aide II, and Engineering Aide I?
2. Is the Dental Hygienist a professional employee within the meaning of Section 111.70(1)(L) (MERA) and therefore to be included within a unit of all regular full-time and regular part-time health professional employees of the City of Wauwatosa?
3. Is the position of civil Engineer III and Field Supervisor a supervisory position within the meaning of Section 111.70(1)(o) (MERA) such that it should be excluded from any bargaining unit?

POSITIONS OF THE PARTIES

The City

The City asserts that the incumbent in the position of the Dental Hygienist does not perform work which is predominantly intellectual and varied in character; nor is the knowledge required for the position obtained by a prolonged course of specialized education. Moreover, the City argues that the Public Works Inspectors and Civil Engineering Aides engage in work that is primarily "white collar" and therefore are most appropriately placed in a unit described as "all regular full-time and regular part-time unrepresented clerical and administrative employees (white collar) of the City of Wauwatosa. . . ."

-
- 8/ In addition to the custodial vote the parties stipulated to a vote among all clerical employees currently represented by the Union in the existing DPW unit for the purpose of determining whether they are to be included in the white collar unit.

No. 12032-C
 No. 17241
 No. 17242
 No. 17243
 No. 17244

Regarding the specific positions, the City argues as follows:

- a. The Public Works Inspector's primary function is to insure compliance with plans and specifications, which requires the use and possession of technical experience and training. Consequently, the City concludes that the positions are properly deemed "white collar" and appropriately placed within the clerical and administrative (white collar) unit.
- b. The Engineering Aide II (office) position involves drafting techniques and preparation of detailed and technical engineering computations and drawings. Consequently, the position is properly deemed white collar.
- c. The Engineering Aide III (Field) is in charge of a surveying field party performing a wide variety of surveying tasks of a technical nature. As such the position is properly deemed white collar.
- d. The Engineering Aide II position requires the use of engineering equipment such as a transit and level, and the tasks performed are essentially of technical nature. As a consequence, such a position is also white collar.
- e. The Engineering Aide I position also requires the use of knowledge, experience and skills of a technical nature and as a consequence also should be white collar and within the professional engineering unit.

Regarding the supervisory status of the Civil Engineer III and Field Supervisor, the City notes the incumbent in said position directs the work of nine employes, verifies the accuracy of their time slips, approves and denies vacation and leave requests, warns employes orally of possible disciplinary actions and as a result is properly excluded from any bargaining unit as a supervisor.

The Union

The Union, on the other hand, asserts that the dental hygienist is a professional employe within the meaning of Section 111.70(1)(L) MERA). More specifically, the Union argues that the dental hygienist must make decisions as to the necessity of medical care; that she prepares lectures on dental hygiene which are delivered to the public; and that she spends approximately 25% of her time updating her knowledge of dental hygiene. The Union alleges that the Civil Engineer III and Field Supervisor position is currently occupied by an individual who has no authority to hire, transfer, suspend, lay-off, recall, promote, discharge, or adjust grievances, nor effectively recommend same, and therefore ought to be included within the appropriate unit. As regards the inclusion of the Civil Engineering Aides and Public Works Inspectors in the unit described in Case XXXII, the Union notes that the outdoor nature of the work performed by said employes is typical of "blue collar" workers in general. It concludes, therefore, that such positions are best included in a blue collar unit.

DISCUSSION

I. The Appropriate Bargaining Unit

Section 111.70(4)(d)2.a. of MERA specifies the Commission's responsibility in establishing appropriate units:

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

The Commission shall determine the appropriate 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. In making such determination, the Commission may decide whether, in a particular case, the employees in the same of several departments, division, institutions, crafts, professions or other occupational groupings constitute a unit.

In applying the above statutory criteria in establishing appropriate bargaining units, the Commission considers the following factors: 9/

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with duties and skills of other employees.
3. The similarity of wages, hours and working conditions of the employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common work place with the employees in said desired unit or whether they share the work place with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

However, the weight, if any, to be given each factor in any case depends on the specific facts of that case. The disputed group consists of the following: four employees classified as Public Works Inspector; one Engineering Aide III (Office); two Engineering Aides III (Field); one Engineering Aide II; and one Engineering Aide I.

The Public Works Inspector position involves the inspection of work performed by construction contractors for the City in order to evaluate compliance with plans, specifications, codes and ordinances. Approximately 70% of the Inspector's work time is spent outside at the site of the construction project. During the winter months, the Inspector works on the survey crew and performs the functions of a "rod man" or "instrument man" as described below.

Specifically, the tasks performed by the Inspectors include: check the grade and line of pipe laid for the City; checking the materials used and grade of curb and gutter construction; checking the steel used in the construction of bridges to determine compliance with specifications; and checking grading operations. Reports regarding the inspection are filed with the Engineering Department and the Inspector will occasionally work as a draftsman. The equipment used includes measuring tapes, a level, ruler, shovel, pick and calculator. The weekly wage for such position ranges from \$256.43 to \$209.59. Supervision of the Public Works Inspector is shared between the project engineer, the field supervisor and Civil

The work is performed out of doors and accordingly is affected by inclement weather.

The Civil Engineer Aide III (Field), more commonly known as a "survey crew chief" provides working supervision of the survey crew. He receives the direction to perform a land surveying task, directs the crew to completion of the job and performs the surveying work himself as part of a team. The types of jobs performed by the City survey crews include: Topographical surveys, the establishment of center lines for various construction projects, establishment of bench mark or elevation stations, determination of the elevation of sewer and piping projects, and property surveys. Tasks of the Civil Engineer III which distinguish the position from Civil Engineer II and I include: supervision of the crew, maintenance of accurate field notes, adjustment and maintenance of the instruments and computation necessary for applying land survey principles.

The Civil Engineering Aide II, more commonly known as a "survey instrument man", performs various tasks on the survey crew but is more specifically responsible for the operation of survey instruments. Thus the functions of this position include the use of the transit to direct the crew in establishing center lines, operation of level to read and set elevations and the use of the transit to direct the establishment of and determine the accuracy of property lines and layout of construction projects. At times the Civil Engineering Aide II also performs the tasks more commonly characteristic of the other two positions on the survey crew, including the measuring of distances with chains and tapes, the review of field notes, digging as necessary to find manhole covers and property corners, manual work necessary for the establishment of all survey marks, and adjusting the instruments.

The Civil Engineering Aide I, more commonly known as a "survey rod man", most commonly performs the following tasks: location of monuments, section lines and corners, measuring distances and line and establishment of survey marks. Thus, for example, the employee would be responsible for using a cloth tape to measure and locate existing structures and sizeable objects for the purpose of subsequent inclusion on topographic or cross-section drafts. Once again, this position often involves duties more commonly performed by the other members of the survey crew.

The three Civil Engineering Aide classifications demonstrate a close integration of working functions with a substantial amount of interchange of particular duties. The three positions, as a team, also demonstrate a significant degree of autonomy in the decisions made regarding the direction of the work in the field. As noted above, Kenneth Balogh, Civil Engineer III and Field Supervisor, assigns the work to be performed by the survey crews. The pay ranges during 1978 for the above position are as follows: Engineering Aide III - \$288.80 to \$331.70 per week; Engineering Aide II - \$250.67 to \$282.83 per week; and Engineering Aide I - \$232.55 to \$257.89 per week. Like the Public Works Inspectors, the land surveyors spend the overwhelming portion of the time working outdoors and, accordingly, the working conditions are affected by inclement weather. It is also noteworthy that a characteristic of the surveying duties includes vigorously physical work in unpleasant areas. When marking a center line, for example, brush and trees obscuring the line of sight must be removed by hand. Locating objects for topographical or cross-section surveys requires working on rough and sometimes wet ground. Setting survey hubs and pins entails the use of mauls and hammers; and locating manholes and corner monuments often requires the use of pick axes and shovels.

The stipulated "white collar" unit in which the Employer requests the Commission to include the Public Works Inspectors and Civil Engineering Aides, is comprised of approximately 30 separate job classifications in fourteen different city departments. Classifications typical

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

in this unit include Clerk Stenographer, Clerk, Clerical Aide, Librarian and Accountant. The City identifies the following positions in the stipulated "white collar" unit as most similar to the disputed positions:

Associate Planner	Draftsman
Deputy City Assessor	Plumbing Inspector
Assistant City Assessor	Electrical Inspector
Planning Technician	Building Inspector
Junior Draftsman	Survey Worker
Drafting Technician	

The stipulated "blue collar" unit is also comprised of approximately 30 separate job classifications in a number of different City departments. Classifications characteristic of the "blue collar" unit would include Laborer, Custodian, Arborist and Maintenance Mechanic. The Union points specifically to the following positions as exemplative of the similarity of their duties and skills with the disputed positions:

Stock Clerk	Meter Serviceman
Dispatcher Clerk	Water Serviceman
Water Operator Clerk	Control System Technician
Watchman	Garage Attendant
Meter Reader	Collector Aide I
Route Collector I and II	Electrical Aide
Meter Repairman I and II	Electrical Technician
Sign Technician	Route and Field Operator

Like the disputed positions, a number of the above positions meld a combination of technical and manual tasks in outdoor or construction site work areas. Examples of such positions within the blue collar unit would include: Water Meter Repairman I and II, Sign Technician, Meter Serviceman I, Controls System Technician, Water Plant Operator I, Electrical Aide, and Electrical Technician.

We note that three of the criteria normally relied upon to distinguish separate communities of interest will not differentiate the disputed positions from either the "blue collar" or "white collar" unit. The wages paid both those in the white collar and blue collar units span a roughly equal range, although the highest wages paid to those in the white collar unit are slightly higher than those paid at the top scale in the blue collar unit. There exists a diversity of supervision in those multi-departmental units, consequently, the line of supervision of the disputed position serves no useful purpose in the attempt to distinguish a community of interest. There appears to exist several, albeit distinct work places for most employes in both "blue collar" and "white collar" units. The work place for both the Public Works Inspector and Civil Engineering Aides (Field) is random and therefore similar to neither unit. Although, it should be noted as discussed below, there is a greater number of employes in the blue collar unit who will work out of doors at varying locations.

Under the circumstances of this case, and particularly in view of the blue collar, white collar nature of the stipulated units, we find that the determinative factor is the nature of the duties primarily performed by the disputed employes. Except for the Engineering Aide III (Office), the disputed employes primarily perform routine manual functions, out-of-doors. While they do spend some time performing technical tasks, there are employes already included by stipulation in both units who perform similar tasks. Therefore, the performance of these tasks is not determinative. We conclude these positions are appropriately included in the blue collar unit.

Although both parties apparently assumed allocation of these positions would be made as a group, we conclude this is inappropriate under the rationale expressed above. Thus, the Engineering Aides III (Office)

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

has duties similar to clerical and technical employees in the "white collar" unit, all of which are performed in-doors. We conclude the Engineering Aide III (Office) is appropriately included in the white collar unit.

II. Professional Status of the Dental Hygienist

Pursuant to Section 111.70(1)(1) a "professional employe" is:

1. Any employe engaged in work:
 - a. Predimnantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employe who:
 - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d.;
 - b. Is performing related work under the supervision or a professional person to qualify himself to become a professional employe as defined in subd. 1.

In two recent cases, City of West Allis, (13779) 7/75, and City of Madison (Health Department) (14463-A 7/76, this Commission has reviewed the above definition for the purpose of determining whether dental hygienists were professional employes within the meaning of MERA. In both the above cases, as in this, the position required two years of specialized training beyond high school and licensure as a dental hygienist in the State of Wisconsin. In this case, as in the above, we repeat that two years of specialized training necessary to acquire a dental hygienist license is not "professional training within the meaning of MERA. Although the incumbent has voluntarily continued her education in fields related to her occupation, the position itself is not one "[r]equiring knowledge of an advanced type in a field of science or language customarily acquired by a prolonged course of specialized intellectual instruction in an institution of higher education or a hospital. . . ." As in City of West Allis and City of Madison (Health Department), we conclude that the position of Dental Hygienist in the City of Wauwatosa is not a "professional employe" within the meaning of MERA. Accordingly, said position is to be included in the unit comprised of "all regular full-time and regular part-time employes (white collar) of the City of Wauwatosa.

III. Supervisory Status of the Civil Engineer II and Field Supervisor

Section 111.70(1)(b) of MERA defines the term "supervisor" as follows:

. . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

In its interpretation of the above definition, the Commission has on numerous occasions listed the following factors as those to be considered in the determination of an individual's supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees.

The Commission has held that not all of the above factors need be present, but such factors must be present in sufficient degree or combination to warrant a conclusion that the position in dispute is supervisory within the meaning of MERA.

Mr. Kenneth Balogh, who occupies the position of Civil Engineer III and Field Supervisor, is primarily responsible for the direction and assignment of work of the public works inspectors and civil engineering aides. The nine employees within such positions report directly to Balogh on a daily basis. Slightly less than 50% of Balogh's work day is consumed by his attention to these supervisory tasks. In addition, Balogh is responsible for the approval of vacation and sick leave requests of the above employees. Moreover, Balogh reviews the time slips submitted by the field section employees, initials them, and would independently initiate adjustment of the time slips if the same did not correspond to his review.

We note that supervisory decisions regarding the discipline, promotion and hiring of the employees in the field section are primarily within the ambit of the City's Civil Service Commission. We also note that the individual chiefly responsible for such action taken by the Civil Service Commission would be the Engineering Administrator and not Balogh. Nevertheless, we conclude that the broad authority to direct and assign the work of the nine employees in the field section, the substantial time spent by Balogh exercising such supervisory authority which is of a non-routine nature, and the substantially higher rate of pay received by Balogh for

said position from the bargaining unit as a supervisor within the meaning of Section 111.70(1)(o)(1). 10/

The elections shall be conducted as follows:

(1) Among those eligible to vote in "Voting Group No. 1" (white collar employees currently included within the blue collar unit) there shall be two ballots for each voter. The first ballot shall reflect the employees' choice either to be included within the unit of all white collar employees or to remain in the blue collar unit. The voter shall indicate on the second ballot whether or not he or she is in favor of union representation. Only if the majority of those eligible within this voting group are in favor of being included in the white collar unit, shall the representation ballots be commingled with the remainder of those in the white collar unit (Voting Group No. 3), otherwise the representation ballots shall be impounded. 11/

(2) Among those employees in Voting Group No. 2, there shall be a vote to determine whether the employees favor union representation. If the majority vote in favor of representation, then the group shall be included within the blue collar unit as described in the Direction of Elections.

(3) Among those eligible to vote in Voting Group No. 3, there shall be one ballot for representation.

(4) Among those in Voting Groups 4 and 5, there shall be two ballots. The Union has requested that these employees have an opportunity to vote for inclusion in the original, now blue-collar unit of represented City employees. It should be noted that Section 111.70(4)(d) of MERA provides with respect to inclusion of professional employees in a non-professional unit, that a majority of the professional employees eligible must vote for inclusion in the non-professional unit in order to be so included. The balloting herein shall be conducted as follows: The eligible employees voting in Voting Groups Nos. 4 and 5 will be given the opportunity to determine (1) whether they desire to be represented by the Petitioner, and, (2) whether they desire to be included in one unit with the employees in Voting Group No. 2. The ballot with respect to unit preference will be counted separately and should a majority of the employees in Voting Groups Nos. 4 and 5 vote to be included in the unit described in Voting Group No. 2, the representation ballots will be co-mingled and counted with the representation ballots cast by employees in Voting Group No. 2.

The Commission wishes to make clear that should a majority of the eligible employees in Voting Groups Nos. 4 and 5 not vote in favor of being included in the unit with the employees in Voting Group No. 2, said voting groups shall constitute separate units, and therefore

10/ See Milwaukee County (14169-A) 10/26/77 wherein the Commission found that: (1) although a Stores Supervisor spent 25% of his time performing bargaining unit work and a substantial additional portion of his time supervising stores activities, he was supervising employees based on the combination and degree of his supervisory responsibilities, and, (2) because of the substantial non-routine duties performed during half the year, Assistant Highway Foremen were properly found to be supervisors.

11/ Such voting procedure was stipulated by the parties.

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

said position from the bargaining unit as a supervisor within the meaning of Section 111.70(1)(c)(1). 10/

The elections shall be conducted as follows:

(1) Among those eligible to vote in "Voting Group No. 1" (white collar employees currently included within the blue collar unit) there shall be two ballots for each voter. The first ballot shall reflect the employees' choice either to be included within the unit of all white collar employees or to remain in the blue collar unit. The voter shall indicate on the second ballot whether or not he or she is in favor of union representation. Only if the majority of those eligible within this voting group are in favor of being included in the white collar unit, shall the representation ballots be commingled with the remainder of those in the white collar unit (Voting Group No. 3), otherwise the representation ballots shall be impounded. 11/

(2) Among those employees in Voting Group No. 2, there shall be a vote to determine whether the employees favor union representation. If the majority vote in favor of representation, then the group shall be included within the blue collar unit as described in the Direction of Elections.

(3) Among those eligible to vote in Voting Group No. 3, there shall be one ballot for representation.

(4) Among those in Voting Groups 4 and 5, there shall be two ballots. The Union has requested that these employees have an opportunity to vote for inclusion in the original, now blue-collar unit of represented City employees. It should be noted that Section 111.70(4)(d) of MERA provides with respect to inclusion of professional employees in a non-professional unit, that a majority of the professional employees eligible must vote for inclusion in the non-professional unit in order to be so included. The balloting herein shall be conducted as follows: The eligible employees voting in Voting Groups Nos. 4 and 5 will be given the opportunity to determine (1) whether they desire to be represented by the Petitioner, and, (2) whether they desire to be included in one unit with the employees in Voting Group No. 2. The ballot with respect to unit preference will be counted separately and should a majority of the employees in Voting Groups Nos. 4 and 5 vote to be included in the unit described in Voting Group No. 2, the representation ballots will be co-mingled and counted with the representation ballots cast by employees in Voting Group No. 2.

The Commission wishes to make clear that should a majority of the eligible employees in Voting Groups Nos. 4 and 5 not vote in favor of being included in the unit with the employees in Voting Group No. 2, said voting groups shall constitute separate units, and therefore

10/ See Milwaukee County (14169-A) 10/26/77 wherein the Commission found that: (1) although a Stores Supervisor spent 25% of his time performing bargaining unit work and a substantial additional portion of his time supervising stores activities, he was supervising employees based on the combination and degree of his supervisory responsibilities, and, (2) because of the substantial non-routine duties performed during half the year, Assistant Highway Foremen were properly found to be supervisors.

11/ Such voting procedure was stipulated by the parties.

No. 12032-C
No. 17241
No. 17242
No. 17243
No. 17244

the representation ballots cast by the employes in Voting Groups
Nos. 4 and 5 will be counted separately.

Dated at Madison, Wisconsin this 29th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner