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In the Matter of the Petition of	:	
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CITY OF MILWAUKEE	:	Case CCXXX
	:	No. 28646 ME-2053
Requesting Clarification of	:	Decision No. 18996-A
Bargaining Involving Certain	:	
Employees of	:	
	:	
CITY OF MILWAUKEE	:	
	:	

Mr. John F. Kitzke, Assistant City Attorney, City Hall, 200 East Wells Street, Milwaukee, Wisconsin, 53202, on behalf of the City of Milwaukee. Padway & Padway, Attorneys at Law, Wisconsin Tower Building, 606 West Wisconsin Avenue, Milwaukee, Wisconsin, 53202, by Mr. Milton S. Padway, on behalf of the Public Employees Union No. 61, Laborer's International Union of North America, AFL-CIO. Podell, Ugent & Cross, S.C., Attorneys at Law, 207 E. Michigan Street, Milwaukee, Wisconsin, 53202, by Ms. Nola Cross, on behalf of Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 423.

City of Milwaukee having, on September 18, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to determine whether individual employees employed by the City as Driver/Loaders in its Bureau of Sanitation, Department of Public Works, should be included in an existing collective bargaining unit represented by Public Employees' Union No. 61, Laborer's International Union of North American, AFL-CIO, or in an existing collective bargaining unit represented by District Council 48, AFSCME, AFL-CIO and its affiliated Local 423; and hearing in the matter having been conducted on November 12 and December 17, 1981, by Examiner Amedeo Greco, a member of the Commission's staff; and briefs and reply briefs having been filed by March 23, 1982 by said two Labor Organizations, and the City having elected not to file any briefs in the matter; and the Commission having reviewed the record and the briefs of Counsel, and being fully advised in the premises, makes and issues the following

1. That the City of Milwaukee, hereinafter referred to as the City, is a municipal employer and has its main offices at City Hall, 200 East Wells Street, Milwaukee, Wisconsin, 53202; and that among the services provided its residents, the City, by employees employed in its Department of Public Works, collects and disposes of refuse and garbage.

3. The District Council 48, AFSCME, AFL-CIO and its affiliated Local 423, hereinafter jointly referred to as AFSCME, except where otherwise noted, is a labor organization having its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin, 53208; and at the time of the instant proceeding AFSCME represented, and continues to represent, certain employees also employed in the Department of Public Works of the City.

4. That, in the spring of 1963, in a representation proceeding conducted pursuant to the then existing Section 111.70, Wis. Stats., the Wisconsin Employment Relations Commission hereinafter referred to as the Commission, and then known as the Wisconsin Employment Relations Board (WERB), which proceeding had been initiated by petition filed by City of Milwaukee Garbage Collectors Laborers Independent Local Union, the predecessor of Laborers herein, the WERB

directed and conducted an election among Garbage Collection Laborers employed in the Bureau of Garbage Collection, Department of Public Works of the City to determine whether said employes desired to constitute themselves a collective bargaining unit separate and apart from all other employes of the City, and whether said employes desired to be represented by said Laborer's Independent Local Union, or by AFSCME, or by neither of said organizations; that following the conduct of said election, WERB certified the results on May 30, 1963, 1/ which reflected that said employes voted to establish themselves as a separate and distinct collective bargaining unit, and also selected Laborer's Independent Local Union as their collective bargaining representative; that AFSCME appealed such certification through the Wisconsin Supreme Court, which on March 31, 1964 sustained the WERB certification; that, following the filing of a petition by AFSCME, the WERB, on October 8, 1965, directed another election among the Garbage Collection Laborers employed in the Bureau of Garbage Collection to determine whether said employes desired to be represented by AFSCME, or by Laborers, which by then had become the successor to Laborer's Independent Union, or by no organization; that following that election, the WERB certified, on November 1, 1965, that said employes had selected Laborers as their bargaining representative; 2/ that subsequently, and prior to 1971, said Garbage Collection Laborers were classified as Truck Loaders (combustible) employed in the Bureau of Garbage Collection and Disposal, Department of Public Works; and that Laborer's has continued at all times thereafter to represent said employes for the purposes of collective bargaining with the City.

5. That also in the spring of 1963, in a proceeding initiated by petition filed by Chauffeurs, Teamsters and Helpers "General" Union, Local 200, hereinafter referred to as Teamsters, the WERB conducted an election among Special Equipment Operators and Truck Drivers employed in Equipment Operations, Bureau of Municipal Equipment, the Department of Public Works, to determine whether said employes desired to be represented by Teamsters, or by AFSCME, or by no organization; that such direction also provided that should the employes select AFSCME, then said employes would be included in a unit consisting of other employes of the Department of Public Works, excluding, among others, the Garbage Collection Laborers; that in said election, the results of which were certified on April 30, 1963, 3/ said employes selected AFSCME as their bargaining representative, and were, as a result, included in the Department of Public Works unit, which also was represented by AFSCME; that in August, 1968, in a proceeding initiated by Teamsters, the Commission conducted elections among employes, including Truck Drivers, employed in the Operations Division, Bureau of Municipal Equipment, Department of Public Works, to determine whether said employes desire to constitute a bargaining unit separate and apart from other employes of the City, and whether they desired to be represented by Teamsters, or by AFSCME, or by no organization; and that the Commission certified the results of said elections on September 13, 1968, 4/ which reflected that said employes established a separate bargaining unit, and selected Teamsters as their collective bargaining representative.

6. That in December, 1970 pursuant to a reorganizational plan dating back to 1967, the City adopted an ordinance, whereby the Bureau of Garbage Collection, as well as the Bureau of Street Sanitation would be eliminated, and would be combined into a Bureau of Sanitation, which in fact was combined and which has remained in existence at all times material thereafter; that in said ordinance the employes in the former two bureaus were to be transferred to said Bureau of Sanitation, and, further 128 positions of "Truck Driver (Over 3 and 1/2 tons)" and 36 positions of

1/ City of Milwaukee, Case XVIII, Decision No. 6253.

2/ City of Milwaukee Case XXXI, Decision No. 7310.

3/ City of Milwaukee, Case III, Decision No. 6215-J.

4/ City of Milwaukee, Case LXII, Decision No. 8622-C.

"Truck Driver (Under 3 and 1/2 tons)", as well as a number of "Auxiliary" Truck Driver positions, were authorized to be transferred from the Bureau of Municipal Equipment to said Bureau of Sanitation; that such planned reorganization was to become effective January 4, 1971; that as a result of such action by the City, the City, on December 4, 1970, filed a petition requesting the Commission to conduct a representation election among all otherwise eligible employees employed in the Bureau of Sanitation to determine their collective bargaining representative; that following a three day hearing on said petition, and on January 14, 1971, the Commission issued its Direction of Election, wherein it set forth, in part, as follows:

Prior to the establishment of the new bureau the Truck Drivers, who were driving trucks wherein garbage and trash were deposited and hauled, were employed in the Bureau of Municipal Equipment and under the supervision of supervisors of that bureau. Now, the Truck Drivers have been transferred from the Bureau of Municipal Equipment to the Bureau of Sanitation and are under the supervision of supervisors in the latter bureau. Thus, we are satisfied that the Bureau of Sanitation constitutes a separate division or department within the meaning of Sections 111.02(6), 111.05 and 111.70(4)9d) of the Wisconsin Statutes, and since it is a division or a department which is a residual division or department, separate and apart from other divisions, departments, and bureaus of the Department of Public Works, where the employees therein have either selected a bargaining representative or rejected collective bargaining, the Bureau of Sanitation constitutes an appropriate unit, and, therefore, all employees therein, excluding supervisors and confidential employees, are entitled to determine their choice as to their collective bargaining representative, if any. The eligible employees in the unit are given the choice whether they desire to be represented by Public Employees Joint Council, Teamsters Local No. 242, IBT and Laborers Union, Local 61, AFL-CIO, CLC, or by District Council 48 and its appropriate Local No. 33, AFSCME, AFL-CIO, or by neither of said labor organizations. If the employees select Public Employees Joint Council, Teamsters Local No. 242, IBT and Laborers Union, Local 61, AFL-CIO, CLC, as their bargaining representative, the certified representative will be the Joint Council and the Employer will not be required to bargain, as contemplated in Section 111.70, Wisconsin Statutes, separately with the two labor organizations constituting Public Employees Joint Council for any separate classifications included in the appropriate collective bargaining unit. If the employees select District Council 48 and its appropriate Local No. 33, AFSCME, AFL-CIO, as their bargaining representative, the Employer will not be required to bargain, as contemplated in Section 111.70, Wisconsin Statutes, separately with District Council 48 or with its Local No. 33. ...

7. That following the conduct of the balloting, on January 26 and 27, 1971, the Commission, on February 8, 1971 certified 5/ that a majority of the 1138 employees eligible to vote selected Public Employees Joint Council, Teamsters Local 242, IBT, and Laborers Union, Local 61, AFL-CIO as the exclusive collective bargaining representative of City employees in an appropriate collective bargaining unit consisting of a "all employees employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee, excluding supervisors and confidential employees.

8. That in the election conducted on January 26 and 27, 1971, leading to the above noted certification, employees classified as Truck Drivers, and who were contemplated to be transferred to the Bureau of Sanitation, were included among the eligible having the right to vote in that election; that, for some reason, not disclosed at the time, that portion of the planned reorganization described in para. 6 of the Findings of Fact, calling for the transfer of Truck Drivers to the

5/ City of Milwaukee, Case C, Decision No. 10063-C.

Bureau of Sanitation did not, in fact, occur; that on May 10, 1971 AFSCME filed a petition requesting the Commission to conduct another representation election among employees employed in the Bureau of Sanitation; that following a hearing on said petition, the Commission, on May 14, 1971 directed an election among "all employees employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee, excluding drivers, supervisors and confidential employees; that in said election, conducted on May 26 and 27, 1971, 951 employees were eligible to vote, for the purpose of determining whether a majority of such employees voting desired to be represented for the purposes of collective bargaining by AFSCME or by Laborers (Teamsters during the course of the proceeding having indicated that it desired not to be placed on the ballot); that in said election a majority of the employees voting selected Laborers as their bargaining representative, and the Commission so certified the latter organization on June 8, 1971. 6/

9. That on May 10, 1974 an employee of the City filed a petition requesting the Commission to conduct an election to determine whether the employees in the Services Division of the Bureau of Municipal Equipment desired to continue to be represented by Teamsters; that AFSCME intervened in that proceeding; that the collective bargaining unit involved included the following classifications:

Clerk, Dispatcher II, I	Special Equipment Operator
City Laborer (Regular)	Truck Driver (3 and 1/2 tons and over)
Driver Training Instructor	Truck Driver (under 3 and 1/2 tons)
Field Serviceman	Special Municipal Equipment Laborer
Special Municipal Equipment Laborer/City Laborer (Regular)	Automotive Mechanic Helper (Garage Custodian)
	City Laborer (Regular/Seasonal)
	Account Clerk I,

and that in said proceeding the Commission directed an election among the occupants of said classifications to determine whether they desired to be represented by Teamsters, or by AFSCME, or by no organization, with the proviso that should the employees select AFSCME, then said employees would be deemed "accreted" to the following "overall" Department of Public Works unit, then represented by AFSCME:

"all regular employees employed in the various bureaus of the Department of Public Works, excluding all supervisory, confidential, professional and craft employees, and also excluding all employees in the Bureau of Sanitation; all employees having the classifications of Bridge Operator and Boat Operator employed in the Division of Bridges and Viaducts in the Bureau of Bridges and Public Buildings; all regular employees classified as Trench Machine Operator, Clamshell Operator, Crane Operator, Hoist Operator, Hydraulic Hammer Operator, Roller Engineman, Engineman (Asphalt Plant), Roller Repairman, Tractor Operator, Bulldozer Operator and End Loader (over 40 h.p.), and Tractor Operator, Bulldozer Operator (under 40 h.p.); all Plumbing Inspectors and Plumbing Plan Examiner I's employed in the Bureau of Building Inspection and Safety Engineering; all Blacksmiths, Machinists and Machinists Helpers in the Machine Shop in the Field and Shop Operations Division of the Bureau of Traffic Engineering and Electrical Services; and all Mechanics, Electrical Mechanics and Mechanic Helpers employed in the Machine Shop in the Field and Shop Operations Division of the Bureau of Traffic Engineering and Electrical Services".

10. That following the conduct of said election, and after disposing of objections thereto filed by the Teamsters, the Commission on March 27, 1975 certified 7/ the results thereof, which certification reflected that the employees involved had selected AFSCME as the collective bargaining representative; and that

6/ City of Milwaukee, Case CVII, Decision No. 10316.

7/ City of Milwaukee, Case CXLII, Decision No. 13099-E.

pursuant to the direction the employees occupying the classifications noted in the previous para. of the instant Findings of Fact were accreted to the overall Department of Public Works unit represented by AFSCME.

11. That at the present time the Bureau of Sanitation consists of an Administrative Division and a North Area, a South Area and a Central Area, Field Operations, identified as Collection and Special Services; that all of the otherwise eligible employees employed in said Bureau are in the collective bargaining unit presently represented by Laborers; and that the classifications occupied by said employees in the unit are as follows:

Administration

Account Clerk II
Clerk IV, III
Clerk Dispatcher I
Clerk Stenographer II, I
Clerk Typist I
Scale Operator

Field Operations

Field Headquarters Clerk
Sanitation Crew Leader II, I
Sanitation Worker
Stores Clerk
Utility Crew Worker

Auxiliary Positions

Emergency City Labor
Sanitation Crew Leader (Snow)
Sanitation Worker

12. That at the present time the bargaining unit represented by AFSCME, which unit includes the Truck Drivers in issue herein, includes otherwise eligible employees employed in the Operations Division of the Bureau of Municipal Equipment, and that said employees occupy the following classifications:

City Laborer (Regular)	Garage Custodian
Clerk Dispatcher	Truck Driver (Heavy)
Driver Training Instructor	Truck Driver (Light)
Field Service Mechanic	Special Equipment Operator
Garage Attendant	Special Equipment Helper

13. That the primary responsibility and function of the Bureau of Sanitation relates to collection of refuse and garbage throughout the City; that such duties are primarily performed by some 400 Sanitation Workers, who, according to the existing job description for the position perform the following duties and responsibilities:

1. Collects municipal solid waste.
2. Collects furniture, appliances, brush, etc.
3. Sweeps streets.
4. Performs custodial work such as sweeping and cleaning.
5. Operates hand operated power equipment such as weed cutters and small power mowers.
6. Cuts weeds and grass with hand tools.
7. Loads and unloads trucks.
8. Erects and dismantles permanent and temporary barricades.
9. Shovels sand, salt and snow; spreads sand or salt on city streets and walks.
10. Assists equipment operator in mounting and removing plow blade from equipment and assists operator in snow plowing and salt spreading.
11. Performs emergency work of various kinds such as attending snow dumps and other work required outside of regular working hours.
12. Places and removes street sandboxes.
13. Assists in erection of platforms, reviewing stands, polling booths and fencing.
14. Assists in leaf clean up operations and general city owned lots clean up.
15. Acts as attendant at landfill and transfer stations.
16. Performs other related duties as assigned.

14. That the Sanitation Workers spend a majority of their time in the performance of duties related to the collection of refuse and garbage, and in that regard crews, consisting of two or three Sanitation Workers and a Truck Driver,

employed in the Bureau of Municipal Equipment, whose primary duty consists of driving the truck and who infrequently assists the Sanitation Workers in loading same, collect and truck such refuse and garbage; that said Sanitation Workers are directly supervised by supervisory personnel in the employ of the Bureau of Sanitation and that said truck drivers are supervised by personnel in the employ of the Bureau of Municipal Equipment.

15. That approximately 118 Truck Drivers operate trucks utilized in the refuse and garbage collection; that said Truck Drivers are employed in the Bureau of Municipal Equipment and are responsible to, and are supervised by supervisory personnel in said Bureau; that the trucks operated by them in such duties are stored at garages operated by said Bureau; that the duties of said Truck Drivers are set forth as follows:

Drive a truck weighing 3 1/2 tons or more.

Under direction, adjust and do minor maintenance work on motor trucks and other motor driven equipment.

During winter months be available for assignment during periods of snow emergencies. During such emergencies, operate trucks with snow plow and salt or sand spreading equipment.

Perform other related duties as assigned.

16. That prospective Truck Drivers, to be employed in the Bureau of Municipal Equipment, are required to participate in a City training program, with such training being performed by Driving Training Instructors, who are included in the "Truck Driver" unit represented by AFSCME; that Truck Drivers are required to possess a license to drive a truck; and that a significant number of employees presently occupying the Truck Driver classification were previously employed in the Bureau of Sanitation as Sanitation Workers, and as such were then included in the bargaining unit represented by Laborers.

17. That the City for some time had considered a reorganization of its sanitation services; that by letter dated July 21, 1981, the Department of Public Works presented a three year plan to the Public Safety Committee of the City's Common Council; that said plan entails the purchase of approximately thirty new sanitation trucks over three years; that said plan also calls for the creation of a new job classification entitled "Driver/Loader"; that said plan in part provides that:

The Driver/Loader is the key element to evolve the proposed three-year plan. The Driver/Loader concept is based on a low entry cab to reduce in and out fatigue for the working driver servicing point stops in regular collection. This Driver/Loader concept is also applicable under the proposed plan in special service collection with regular truck cab. This is feasible because the frequency of stops is less and travel distance between stops and time of loading per stop is greater which reduces the number of cab departures and reentries per shift.

The detailed job description is shown on Exhibit B attached. The plan provides that the Driver/Loader position as well as any collectors assigned to the route are to be under the direct supervision of the Bureau of Sanitation field supervisors. This reorganization change is necessary to eliminate division of responsibility and the variable work rules between drivers and sanitation workers working the same route. Centralizing supervisory responsibility for these field positions is essential to strengthening field control and ability to manage the work force in an efficient manner.

. . .

The Driver/Loader position shall be considered non-seasonal and, because of the nature of the position, not subject to bumping by employees who are laid off. Should there be a reduction in Driver/Loaders, the layoff provision of the Labor Agreement shall apply.

The Driver/Loader positions will be used interchangeably on regular collection routes, special service routes and for vacation, sick leave, and injury replacement and shall be required to perform the duties of Driver/Loader or Sanitation Worker.

Incumbents shall not be granted a leave of absence to accept seasonal positions such as Operators and Truck Drivers.

Driver/Loaders shall be assigned to the Bureau of Sanitation, under their supervision and on their payroll.

Driver/Loaders shall be assigned to snow and ice control operations.

18. That the City's Common Council thereafter adopted said three year plan on October 21, 1981; that the City has begun to implement same, and in said regard at the time of the instant hearing the City had purchased six of the new trucks and had assigned six employees as Driver/Loaders to man said trucks; that an interim job description for said Driver/Loader classification, in part, provides:

1. Collects and loads municipal solid waste.
2. Drives a truck weighing 3 1/2 tons or more.
3. Collects furniture, appliances, brush, etc.
4. During winter months, be available to operate a truck with salt/sand spreading equipment and/or snow plow blade.
5. Mounts and removes snow plow blade from truck.
6. Under direction, adjust and do minor maintenance work on trucks and related equipment.
7. Assists in leaf-clean-up operations.
8. Is responsible for the safety of operation of assigned equipment, loading of equipment within legal weight limits, and daily maintenance and monitoring and reporting of vehicle performance.
9. Performs other related duties as assigned, including interchangeable assignments on regular collection routes, special service routes and for vacation, sick leave and injury replacement and shall be required to perform the duties of Driver/Loader or Sanitation Worker.

19. That said job description also sets forth that applicants for the position require a valid driver's license, and that they would be required to participate in the City's driver training program; that the individuals presently or when serving as Driver/Loaders were formerly and are presently employed as Truck Drivers in the Bureau of Municipal Equipment and, as such, were, and are represented by AFSCME; that, by virtue of such representation, AFSCME bargained with the City on behalf of the Driver/Loaders, with respect to their hourly rate received in their present position; and that, as a result of said bargaining, the Driver/Loaders are now earned a rate higher than regular truck drivers.

20. That the City's three year plan calls for the utilization of thirty-five Driver/Loaders; that twenty-nine of said positions will be assigned to the new vehicles which the City intends to purchase; that the remaining six Driver/Loaders shall be used to fill in for other Driver/Loaders when they are either ill, on vacation, etc.; and that when they are not filling in for other Driver/Loaders, said six employees will be assigned to perform the work normally performed by the Sanitation Workers.

21. That the purchase of the new sanitation trucks and the creation of the Driver/Loader classification have resulted in significant changes in the manner in which garbage and refuse are being collected on those routes being serviced by the new equipment; that whereas the City previously frequently used two Sanitation Workers and one Truck Driver under its prior method of collecting garbage, it now uses one Driver/Loader and one sanitation Worker on each new truck; that whereas Truck Drivers previously generally did not assist in loading garbage and refuse onto their truck, the Driver/Loaders now regularly do so as part of their duties; that as of the time of the instant hearing, the Driver/Loaders have begun to perform the various duties listed in their job descriptions; that preliminary studies indicate that a Driver/Loader will spend more time in loading duties than in driving duties; and that Driver/Loaders, like the Sanitation Workers, will be directly supervised by individuals in the Department of Sanitation.

22. That the new sanitation trucks, like the other sanitation trucks used by the Sanitation Department, are maintained and housed in garages operated by the Bureau of Municipal Equipment; and that the Driver/Loaders daily pick up and drop off their trucks at garages.

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

CONCLUSIONS OF LAW

1. That the collective bargaining unit consisting of "all employees employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee, excluding supervisors and confidential employees" has been, and continues to remain, an appropriate collective bargaining unit within the meaning of Sections 111.70(1)(e) and (4)(d) of the Municipal Employment Relations Act, and that newly classified non-craft, non-professional, non-supervisory and non-confidential employees employed, or to be employed, in said Bureau of Sanitation may, within the policies expressed in Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, be included in said collective bargaining unit, which unit has been, and continues to be, represented for the purposes of collective bargaining, within the meaning of Section 111.70(4)(d)1 of the Municipal Employment Relations Act, with the City of Milwaukee, by Public Employees' Union No. 61, Laborers' International Union of North America, AFL-CIO.

2. That "all regular employees employed in the various bureaus of the Department of Public Works, excluding all supervisory, confidential, professional and craft employees, and also excluding all employees in the Bureau of Sanitation; all employees having the classifications of Bridge Operator and Boat Operator employed in the Division of Bridges and Viaducts in the Bureau of Bridges and Public Buildings; all regular employees classified as Trench Machine Operator, Clamshell Operator, Crane Operator, Hoist Operator, Hydraulic Hammer Operator, Roller Engineman, Engineman (Asphalt Plant), Roller Repairman, Tractor Operator, Bulldozer Operator and End Loader (over 40 h.p.), and Tractor Operator, Bulldozer Operator (under 40 h.p.); all Plumbing Inspectors and Plumbing Plan Examiner's employed in the Bureau of Building Inspection and Safety Engineering; all Blacksmiths, Machinists and Machinists Helpers in the Machine Shop in the Field and Shop Operations Division of the Bureau of Traffic Engineering and Electrical Services; and all Mechanics, Electrical Mechanics and Mechanic Helpers employed in the Machine Shop in the Field and Shop Operations Division of the Bureau of Traffic Engineering and Electrical Services" has been, and continues to remain, an appropriate collective bargaining unit within the meaning of Sections 111.70(1)(e) and (4)(d)2 of the Municipal Employment Relations Act; and that the following employee classifications employed in the Operations Division of the Bureau of Municipal Equipment have been, and continue to be included in said collective bargaining unit:

City Laborer	Garage Custodian
Clerk Dispatcher	Truck Driver (Heavy)
Driver Training Instructor	Truck Driver (Light)
Field Service Mechanic	Special Equipment Operator
Garage Attendant	Special Equipment Helper;

and that said collective bargaining unit has been, and continues to be, represented for the purposes of collective bargaining, within the meaning of Section 111.70(4)(d) 1 of the Municipal Employment Relations Act, with the City of Milwaukee, by District Council 48 and its appropriate affiliated Locals.

3. That the policies set forth in the Municipal Employment Relations Act, and especially in Section 111.70(4)(d)2 thereof, would not be effectuated by permitting District Council 48, AFSCME, AFL-CIO and its affiliated Local 423 to continue to represent employees of the City of Milwaukee, formerly classified as Truck Drivers, and formerly employed in the Service Division of the Bureau of Municipal Equipment, when said employees become employed in the Bureau of Sanitation as Driver/Loader and thereby are included in the collective bargaining unit represented by Public Employees' Union No. 61, Laborers' International Union of North America, AFL-CIO.

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

ORDER CLARIFYING BARGAINING UNIT 8/

1. That at such time as employees of the City of Milwaukee, employed as Truck Drivers in the Services Division of the Bureau of Municipal Equipment of the Department of Public Works, become employed in the Bureau of Sanitation and are reclassified as Driver/Loaders, said employees shall be deemed included in the appropriate collective bargaining unit consisting of "all employees employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee, excluding supervisors and confidential employees".

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner

I Dissent:


Herman Torosian, Commissioner

- 1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner

(Footnote 1 Continued on Page 10)

resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

The City has initiated the instant unit clarification proceeding requesting the Commission to determine whether employees occupying the newly created classification of Driver/Loader should be accreted to the Bureau of Sanitation bargaining unit presently represented by Laborers, or whether said employees should remain in the "overall" Department of Public Works bargaining unit presently represented by AFSCME. 9/ During the proceeding the City has maintained a neutral stance and limited its role to participating in the hearing and making personnel available as witnesses to develop evidence material to the Commission's determination.

Laborers maintain that Driver/Loaders should be included in the Bureau of Sanitation bargaining unit, which it has represented over the period of years, primarily on the basis that the Driver/Loader possess a close community of interest with the employees in said bargaining unit.

AFSCME to the contrary, contends that Driver/Loaders, since they are primarily truck drivers, should continue to remain in the "overall" Department of Public Works unit, which will still continue to include Truck Drivers who do not become Driver/Loaders. It also claims that the City's proposed reorganization plan is speculative and that the Commission should disregard the testimony relating thereto.

It was apparent, at least at the time of the hearing herein, that the City had just begun the implementation of the reorganization plan by (1) its adoption by the Common Council and the approval of the Driver/Loader classification; (2) the posting for the Driver-Loader position and the hiring of six Driver/Loaders, (3) the purchase of several pieces of new equipment intended to be manned, in part, by the Driver/Loaders, and (4) initiating the new collection procedure utilizing the new equipment use Driver-Loaders.

AFSCME's claim that Driver/Loaders will spend a majority of their time as drivers is not supported by the record. Although the testimony of John Lindquist, a Driver/Loader indicated that in the latter's "opinion", he spent a majority of his work day in driving, Terry Wobick, a supervisor in the Bureau of Sanitation, conducted a four hour study made during the course of following a crew in collecting garbage and refuse with the new equipment, which study indicated that the Driver/Loaders spent a majority of time in loading duties, and not in driving duties.

AFSCME argues that the following circumstances supports its position (1) Driver/Loader previously occupied Truck Driver positions in the Bureau of Municipal Equipment; (2) to become a Driver/Loader employees must be trained by employees who are also included in the unit represented by AFSCME; (3) the equipment operated by Driver/Loaders are housed in garages maintained by the Bureau of Municipal Equipment, whose non-craft employees are included in the unit represented by AFSCME; (4) the Driver/Loaders are presently represented by AFSCME on a conditional basis pending the instant determination, and, further that their rate of pay was established by the latter organization in bargaining with the City; (5) the rate of pay received by Driver/Loaders is, and will be, greater than rates of pay received by the remaining employees in the Laborer's bargaining unit; and (6) the Driver/Loaders, if included in the latter unit will be greatly outnumbered by Sanitation Workers.

In discussing last thing first, we are not impressed with AFSCME arguments relating to Driver/Loaders being outnumbered by other positions in the unit represented by Laborers, or receiving the highest rate of pay of the classification in said unit. If either one or both of said factors were

9/ This proceeding had been consolidated with a complaint proceeding initiated by Laborers, wherein it was alleged that the City had committed prohibited practices by bargaining with AFSCME with respect to the newly created position of Driver-Loader. At the outset of the hearing herein Laborers requested that the complaint proceeding be held in abeyance, and as a result no evidence was taken with respect to that proceeding.

determinative of unit placement, factors could result in the establishment of as many bargaining units as there are classifications, and/or wage rates. Further, the fact that the Driver/Loaders are presently conditionally represented by AFSCME is not determinative, nor is the fact that the equipment, to which they will be assigned, will be housed in garages operated by the Bureau of Municipal Equipment, where vehicles manned by employees in the "overall" AFSCME unit are stored. The same can be said of other AFSCME contentions.

Neither Truck Drivers nor the Driver/Loaders are "craft" employees. The latter positions will be assigned to the Bureau of Sanitation, and only to that Bureau. They will work under the supervision of supervisory personnel assigned to the latter Bureau. Their pay will be charged to the budget of said Bureau, and they will perform their duties pursuant to said Bureau's work rules. Their duties differ from those performed by Truck Drivers manning trucks in garbage and refuse collection, since as Driver/Loaders they will assist in loading duties, and not limit their labor to only driving of vehicles or in performing loading tasks. For the past number of years all otherwise eligible employees employed in the Bureau of Sanitation have constituted an appropriate collective bargaining unit within the meaning of MERA. All these latter factors convince the Commission that the Driver Loaders should be appropriately placed in the existing unit of employees in the employ of the Bureau of Sanitation, which is presently represented by Laborers for purposes of collective bargaining.

Dated at Madison, Wisconsin this 23rd day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman
Morris Slavney
Morris Slavney, Commissioner

Dissenting Opinion:

Unlike the majority, I am not of the opinion that the fact the City may assign the Driver/Loader position to the Bureau of Sanitation is all controlling. Historically, drivers and laborers have not been included in the same bargaining unit and historically AFSCME has represented truck drivers in garbage collection. Here practically speaking the Driver/Loader position is a driver position which has been changed to include loading duties as opposed to a laborer's position which has been changed to including driving. The occupant of the Driver/Loader position must be able to drive a garbage truck and all six Driver/Loader positions have been filled by Drivers who previously drove the conventional type garbage trucks. By utilizing a side-loader, one or two positions, depending on the route and the time of year, are eliminated and quite clearly it is the laborer's position that is eliminated with the driver continuing to drive and load.

Further, while the majority relies on the testimony of Wobick as to the percentage of time spent by driver/loaders driving and loading, the undersigned is not convinced that Wobick's four hour study is more reliable than Linquist's testimony which was based on his experience as a Driver/Loader for a period of 72 work days.

First, Wobick's study only covered a period of four hours as opposed to the entire day. Second, the driver's trip or trips to the dump, which constitutes a substantial driving duty was not timed, but was instead estimated. Third, the tachograph located in the truck which records the movement of the truck, and thus the amount of time the truck is being operated, was not observed. Fourth, unlike before, all of the time spent by a driver outside the truck was considered laborer work even though the driver was not performing loading duties. Finally, as admitted by Wobick, there are a number of variables such as the location of the route, the type of equipment, the experience of the driver, and different field conditions such as weather and the volume of garbage, which could affect the results of his study.

Based on the above the undersigned renders that the Driver/Loader position should remain in the AFSCME unit as it is presently.

Herman Torosian
Herman Torosian, Commissioner