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**COURT OF APPEALS**  
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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

Marilyn L. Graves  
Clerk

Madison, October 29, 1984

To: Nola J. Hitchcock Cross  
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207 E. Michigan St., #315  
Milwaukee, WI 53202

Hon. Michael D. Guolee  
Circuit Court Judge  
901 N. Ninth Street  
Milwaukee, WI 53233  
(L.C. #594-402)

Milton S. Padway  
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John D. Niemisto  
Asst. Attorney General

You are hereby notified that the Court entered the following opinion and order:

Decision No.  
18996-C

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84-251 Milwaukee District Council 48, AFSCME, AFL-CIO v.  
Wisconsin Employment Relations Commission

Before Wedemeyer, P.J., Moser and Sullivan, JJ.

In 1981, the City of Milwaukee established a new position entitled "Driver/Loader." The position incorporated some of the duties of truck drivers with some of the duties of sanitation workers. The city petitioned the Wisconsin Employment Relations Commission for a determination as to whether the new position should be represented by Public Employees' Union 61, which represents municipal sanitation workers, or by District Council 48, which represents municipal truck drivers. The commission determined that the driver/loaders should be represented by Union 61. The commission's decision was affirmed by the circuit court. District Council 48 appeals. After reviewing the record and the briefs submitted by the parties and intervenor in conference, we conclude on our own motion that the appeal is appropriate for summary disposition. See Rule 809.21, Stats.

The commission's decision presents a mixed question of law and fact. Arrowhead United Teachers Organization v. WERC, 116 Wis.2d 580, 587, 342 N.W.2d 709, 713 (1984). This court must separate the factual determinations from the legal conclusions and apply the appropriate standard of

review to each part. Department of Revenue v. Exxon Corp., 90 Wis.2d 700, 713, 281 N.W.2d 94, 101 (1979), aff'd, 447 U.S. 207 (1980).

District Council 48 challenges the commission's finding that driver/loaders spend more time loading than driving. District Council 48 contends that finding is not supported by the evidence. There was conflicting testimony on that issue. A study by Sanitation Supervisor Terry Wobick concluded that driver/loaders spend between twenty-one percent and twenty-six percent of their time driving. A study by John Lindquist concluded that driver/loaders spend about the same amount of time driving as loading. The weight and credibility of that testimony were matters for the commission to resolve. Bucyrus-Erie Co. v. DILHR, 90 Wis.2d 408, 418, 280 N.W.2d 142, 147 (1979). This court is limited to determining whether there was substantial evidence to sustain the commission's findings. See E.F. Brewer Co. v. DILHR, 82 Wis.2d 634, 636, 264 N.W.2d 222, 223-24 (1978). The study by Wobick constitutes substantial evidence in support of the commission's finding.

The commission found that truck drivers are "responsible to and are supervised by supervisory personnel in [the Bureau of Municipal Equipment]." District Council 48 contends that truck drivers assigned to the collection of refuse have been jointly supervised by the Bureau of Municipal Equipment and the Bureau of Sanitation. The testimony shows that, although the drivers were given some instructions by Sanitation supervisors, the drivers were ultimately responsible to and subject to discipline by the Municipal Equipment supervisors. The commission's finding is supported by the evidence.

District Council 48 contends that Union 61 is not the appropriate bargaining unit to represent the driver/loaders and that the interests of the driver/loaders will not be fairly represented by Local 61. The commission's decision was based on its examination of various interests of the employees of the respective bargaining units and a comparison of those interests with the interests of the driver/loaders. The commission considered the duties and

skills of the employees, the similarity of wages, hours and working conditions, whether the employees would have common supervisors and a common workplace, the matter of fragmentation, and the bargaining history.

Because the determination of the appropriate bargaining unit is an area of law requiring expertise, the commission's determination will be upheld if it is reasonable and consistent with the policies set forth in sec. 111.70(4)(d)2, Stats. Milwaukee v. WERC, 71 Wis.2d 709, 716, 239 N.W.2d 63, 67 (1976). Although the driver/loaders have areas of interest in common with other drivers, they also have areas of interest in common with other sanitation workers. The commission's decision that driver/loaders should be represented by Local 61 is both reasonable and consistent with sec. 111.70(4)(d)2. Furthermore, there is no basis for the contention that the interests of driver/loaders will not be fairly represented by Local 61.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is affirmed.

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Marilyn L. Graves  
Clerk of Court of Appeals