

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
MILWAUKEE DISTRICT COUNCIL 48,  
AFSCME, AFL-CIO and its affiliated  
LOCAL 742

Involving Certain Employees of  
CITY OF CUDAHY  
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Case XLI  
No. 28920 ME-2072  
Decision No. 19451-A

In the Matter of the Petition of  
CITY OF CUDAHY  
Involving Certain Employees of  
CITY OF CUDAHY  
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Case XLIV  
No. 29375 ME-2093  
Decision No. 19452-A

Appearances:

Podell, Ugent & Cross, S.C., by Mr. Alvin R. Ugent, Suite 315, 207 East Michigan Street, Milwaukee, Wisconsin 53202, and Mr. Anthony Molter, Milwaukee District Council 48, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mulcahy & Wherry, S.C., by Mr. Robert W. Mulcahy and Mr. Jon E. Anderson, Suite 1600, 815 East Mason Street, Milwaukee, Wisconsin 53202, appearing on behalf of the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER DISMISSING PETITIONS  
FOR UNIT CLARIFICATION

Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 742, having, on December 7, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of clerical and custodial employees in the City Hall, presently represented by Council 48, AFSCME, AFL-CIO, by determining whether the positions of Police Clerk and Department of Public Works Cost and Record Clerk should be included in said unit; and the City of Cudahy, having on February 23, 1982, filed a petition alleging that said unit also included blue collar employees in the Department of Public Works and requesting the Wisconsin Employment Relations Commission to clarify said unit, by determining whether all clerical employees should be excluded from said unit; and the Wisconsin Employment Relations Commission having, on March 9, 1982, ordered the matters be consolidated for the purposes of hearing; and a hearing therein having been conducted at Cudahy, Wisconsin on March 16, 1982 by Coleen A. Burns, a member of the Commission's staff; and the parties having completed the filing of briefs by June 8, 1982; and the Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 742, hereinafter jointly referred to as the Union, is a labor organization and has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

2. That the City of Cudahy, hereinafter referred to as the City, is a municipal employer and has its offices at 5050 South Lake Drive, Cudahy, Wisconsin 53110.

No. 19451-A  
No. 19452-A

3. That on August 22, 1962, following an election conducted by it, the Wisconsin Employment Relations Commission certified the Union as the exclusive collective bargaining representative of the employees of the City employed in the following appropriate bargaining unit: 1/

All regular full-time employees employed in the Department of Public Works and Water Department excluding office and clerical employees, engineers, engineer-trainees, supervisors and executives and all craft employees.

4. That on September 3, 1968, the Common Council of the City adopted Resolution No. 2300, recognizing the Union as the exclusive bargaining agent for "certain clerical employees in a specific unit in the City Hall in the Assessor's, Clerk's, Treasurer's, Engineer's, Inspector's, and Water Utility Offices and the two custodial positions in the City Hall."

5. That the Union and the City are parties to a 1981-1982 collective bargaining agreement containing among its provisions, the following:

#### ARTICLE I - RECOGNITION

1. Exclusive Recognition: The City hereby recognizes the Union as the exclusive collective bargaining agent for the appropriate certified bargaining units (and recognized units) by City of Cudahy Resolution No. 2300, and as the certified representative for those employed in these bargaining units occupying the classifications as defined in the appropriate "Certifications of Representatives" promulgated by the Wisconsin Employment Relations Commission, and clerical and custodial employees of the City as determined by Wisconsin law. The Union recognizes its responsibility to cooperate with the City to assure maximum service at minimum cost to the public consonant with its obligations to the employees it represents.

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#### APPENDIX A 2/

PUBLIC WORKS	WATER UTILITY
Mechanic II, I Mechanic Aides Equipment Operator III, II, I Laborers Maintenance Utility	Purification Plant Operator Relief Purification Plant Operator Utility Serviceman II, I
CLERICAL	JANITORIAL
General Office Clerk II, I Bookkeeper Key Punch Operator Deputy Registrar Vital Statistics Billing Clerk Water Utility	Custodian - Municipal Custodial - Women Custodial - Library

6. That the parties have voluntarily accreted the collective bargaining unit recognized in Resolution No. 2300 to the bargaining unit certified by the Wisconsin Employment Relations Commission.

1/ City of Cudahy (6028) 8/2/62.

2/ Sets forth the classifications and wages rates of the employees covered by the agreement. Only the classifications are reflected above.

7. That the "organizational chart" setting forth, among other things, the various departments and offices of the City, wherein employes occupying the above positions, as well as remaining employes, who are neither professional, craft, supervisory nor confidential, are employed, are as follows, and that the clerical positions which are not included in the existing units are designated as (\*), and the numerical figure preceding the position indicates the number of employes occupying same:

Health Department	Clerk-Comptroller
<hr/> 1 General Office Clerk II 1 General Office Clerk - Part Time (*)	<hr/> 2 General Office Clerk I 1 General Office Clerk II 2 Bookkeeper-Key Punch Operator
Police Department	Public Works Department
<hr/> 3 Civilian Office Clerks (*)	<hr/> 1 Records Clerk (*)
Library	Water Utility
<hr/> 1 Library Aide (*) 4 Library Aide - Part Time (*)	<hr/> 1 Water Billing Clerk
City Assessor	Treasurer's Office
<hr/> 1 General Office Clerk II	<hr/> 1 General Office Clerk II

8. That the Union, in its petition, requests the Commission to determine whether the clerical employes in the Police Department and in the Department of Public Works, namely the Civilian Office Clerks, and the Records Clerk, should be included in the voluntarily recognized bargaining unit; and that the City contends that the occupants of said positions should not be included in the unit, since (1) the unit has been voluntarily recognized at such time as these positions were in existence and excluded therefrom by the parties, (2) the Clerks in the Police Department lack a community of interest with the employes in the existing unit, and (3) the Clerk in the Department of Public Works is a confidential employee.

9. That in its petition the City requests the Commission to clarify the combined unit (the certified and the unit voluntarily recognized pursuant to Resolution 2300) by excluding all clerical employes from the combined bargaining unit.

10. That at the time the City voluntarily recognized the Union as the bargaining representative of the clerical and custodial employes occupying the positions set forth in para. 4 supra, the City employed individuals occupying the clerical positions in the Police Department and in the Public Works Department; and that the exclusion of said employes from said voluntarily recognized unit was not based on any statutory grounds.

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

#### CONCLUSIONS OF LAW

1. That all otherwise eligible blue collar, custodial, and office and clerical employes in the employe of the City of Cudahy, excluding all other employes, and all confidential, supervisory and managerial employes, constitutes an appropriate collective bargaining unit within the meaning of Secs. 111.70(1)(e) and 111.70(4)2.a. of the Municipal Employment Relations Act.

2. That since the positions desired by Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 742 to be accreted to the aforesaid

voluntarily recognized appropriate collective bargaining unit were in existence at the time the parties excluded them from said unit on other than statutory grounds and further, since the City of Cudahy opposes said accretion by an Order of the Wisconsin Employment Relations Commission, the Commission will not, pursuant to the power vested in it by Sec. 111.70(4)2.a. of the Municipal Employment Relations Act, accrete said positions to said collective bargaining unit.

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

ORDER 3/

IT IS ORDERED that

1. The petition filed by District Council 48, AFSCME, AFL-CIO and its affiliated Local 742, seeking to accrete clerical positions in the Police Department and Water Department to the existing combined unit of employees in the employ of the City of Cudahy, be, and the same hereby is, dismissed.

2. The petition filed by the City of Cudahy seeking the exclusion of the clericals from the existing combined unit, be and the same hereby is, dismissed.

Given under our hands and seal at the City of  
Madison, Wisconsin this 15th day of December, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli  
Gary L. Covelli, Chairman

Morris Slavney  
Morris Slavney, Commissioner

Herman Torosian  
Herman Torosian, Commissioner

- 3/ 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 (Continued on Page Five)

3/ (Continued)

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 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 DISMISSING  
PETITIONS FOR UNIT CLARIFICATIONS

DISCUSSION

The Union petitioned the Commission to clarify an existing unit of clerical and custodial employees by determining whether the positions of Police Clerk and Department of Public Works Cost and Record Clerk should be accreted thereto. Subsequently, the City petitioned the Commission alleging that the existing unit consisted of clerical, custodial and blue collar DPW employees and requesting that the Commission exclude all clerical workers therefrom. The two petitions were consolidated for the purpose of hearing.

A literal reading of City of Cudahy Resolution No. 2300 and Article I of the collective bargaining agreement leads one to the conclusion that there presently exists two separate bargaining units, i.e., the certified DPW unit and the clerical/custodial unit voluntarily recognized pursuant to Resolution No. 2300. Such conclusion is supported by the Union's petition which omits the DPW employees from the description of the unit for which clarification is sought. At hearing, however, the City and the Union maintained that the clerical/custodial unit set forth in Resolution No. 2300 had been combined with the certified DPW unit to create a single voluntarily recognized unit. In the instant case, the Commission is persuaded that the parties have accreted the clerical/custodial unit set forth in Resolution No. 2300 to the certified DPW unit, thereby creating a single voluntarily recognized collective bargaining unit, which does not contravene the provisions of MERA.

The City, relying upon City of Cudahy (12997) 9/74, maintains that it is inappropriate to expand the scope of a voluntarily recognized unit by way of a unit clarification proceeding and, therefore, the petition of the Union should be dismissed. Also, the City argues that, in the event that the Commission entertains the Union's petition, the position of Police Clerk should be excluded on the basis that the position lacks a community of interest with the employees in the unit. The City further argues that the position of DPW Cost and Record Clerk is confidential, with the result that the occupant of said position is not a "municipal employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

The City also filed a petition wherein it contends that there is a lack of "community of interest" between the blue collar DPW employees and the clerical employees in the unit. It is the position of the City, therefore, that the existing unit is inappropriate and should be severed into two separate bargaining units, a blue collar unit and a clerical unit.

The Union maintains that the employees in the positions of Police Clerk and DPW Cost and Record Clerk share a community of interest with employees in the unit and, thus, should be accreted into the unit. The Union denies that the DPW Cost and Record Clerk is a confidential employee within the meaning of Section 111.70(1)(b). The Union further denies that the existing unit inappropriately combines blue collar and clerical employees and asserts that a severance of the existing unit into two units would be contrary to the anti-fragmentation policy of Section 111.70(4)(d)(2)(a).

Generally, the Commission will not, through a petition for unit clarification, exclude employees from a collective bargaining unit which the parties voluntarily had agreed upon as being appropriate, unless the continued inclusion of the contested positions contravenes the provisions of the Municipal Employment Relations Act. 4/ In the instant case, neither side argues nor does

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4/ Waukesha County (14830) 8/76.

the record establish that the clerical positions within the unit are not "municipal employees" within the meaning of Section 111.70(1)(b), or that the unit commingles professionals and non-professional employees or craft and non-craft employees contrary to the provisions of Section 111.70(4)(d)2.a. Therefore, under the circumstances herein, the Commission is today dismissing the petition of the City.

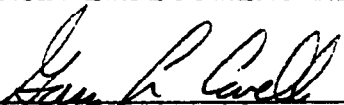
The Commission has consistently refused to expand a voluntarily recognized unit without an election in the unit deemed appropriate if the following conditions are present: 5/

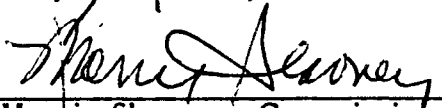
1. The positions at issue were in existence at the time of the voluntary recognition.
2. The description of the voluntarily recognized unit implicitly or explicitly excludes the positions at issue.
3. Either the Employer or the Union oppose the proposed expansion.
4. The original exclusion was not based upon statutory grounds.
5. The unit is not repugnant to the provisions of the Municipal Employment Relations Act.
6. There has not been any intervening events which would materially affect the status of the affected employees.

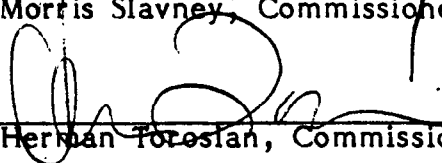
The clerical positions desired to be accreted to the unit herein were in existence at the time the City granted voluntary recognition. It is clear that they were not included in said voluntarily recognized unit. The City opposes their accretion. Their original exclusion was not based on statutory grounds, and the existing unit is not repugnant to the provisions of MERA. Therefore, under such circumstances the Commission will not accrete the desired positions to that unit, and as a result we need not determine other issues involved, namely whether the clericals in the Police Department share a community of interest with the clericals in the unit, whether the clerical in the Department of Public Works is a "confidential" employee, and whether other regular full-time and regular part-time clerical types also not in the unit should be considered for possible accretion. The petition of the Union is therefore also dismissed.

Dated at Madison, Wisconsin this 15th day of December, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

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5/ Madison Vocational, Technical and Adult School (8382-A) 1/80; City of Cudahy (18502) 3/81.