

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
CUDAHY TECHNICAL AND HEALTH
SERVICES ASSOCIATION
Involving Certain Employees of
CITY OF CUDAHY

Case XXXVIII
No. 28079 ME-2008
Decision No. 19507

Appearances:

Marola, Bohren & Gronowski, Attorneys at Law, 10401 West Lincoln Avenue,
Milwaukee, Wisconsin 53227, by Mr. Michael O. Bohren, appearing on
behalf of Cudahy Technical and Health Services Association.
Mulcahy & Wherry, S.C., Attorneys at Law, 815 East Mason Street, Suite 1600,
Milwaukee, Wisconsin 53202, by Mr. Robert Mulcahy and Mr. Jon
Anderson, appearing on behalf of the City of Cudahy.
Podell, Ugent & Cross, S.C., Attorneys at Law, 207 East Michigan Avenue,
Suite 315, Milwaukee, Wisconsin 53202, by Mr. Alvin Ugent, appearing on
behalf of Local 742, District Council 48, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTIONS

Cudahy Technical and Health Services Association having on May 26, 1981 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the City of Cudahy to determine whether said employees desired to be represented for the purpose of bargaining by said Association; and hearing in the matter having been scheduled for July 7, 1981 and subsequently postponed to September 28, 1981, and rescheduled and conducted on September 28, September 29, October 29 and November 11, 1981 at Cudahy, Wisconsin before Hearing Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff, during the course of which Local 742, District Council 48, AFSCME, AFL-CIO was permitted to intervene on the basis of claiming an interest in the matter; and a transcript of the proceedings having been prepared; and the Examiner having exchanged briefs on January 5, 1982; and the City having submitted a reply brief on January 22, 1982; and the Association having, on March 2, 1982, advised the Commission that it would not be submitting a reply brief and the Commission having considered the evidence and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Cudahy Technical and Health Services Association, hereinafter referred to as the Association, is an employee organization existing for the purposes of representing employees in collective bargaining; and that the Association has its offices at 6001 South Delaware Avenue, Cudahy, Wisconsin.
2. That the City of Cudahy, hereinafter referred to as the City, is a municipal employer and has its principal offices at 5050 South Lake Drive, Cudahy, Wisconsin; and that the City, in the performance of its various governmental functions, operates and maintains various departments, wherein it employs various classifications of employees.
3. That the Association initiated the instant matter before the Wisconsin Employment Relations Commission, by a petition requesting that the Commission conduct an election among certain of the City's employees in a bargaining unit claimed to be appropriate by the Association; that said petition was not accompanied by a showing of interest executed by any of the employees involved; that at the outset of the Commission hearing in the matter Local 742, District Council 48, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, was permitted to

intervene in the instant proceeding on the basis that it has been, and presently is, the exclusive collective bargaining representative of "blue collar" employees employed in the City's Department of Public Works and in its Water Utility, as well as employees in a City-wide unit of clerical and custodial employees, and on the basis that on the face of the petition filed by the Association it appeared that the unit claimed to be appropriate by the Association may have included classifications included in the units represented by AFSCME.

4. That during the course of the hearing herein, and after AFSCME was permitted to intervene in the matter, the Association amended its petition to describe the collective bargaining unit it seeks to represent as "all regular full-time and regular part-time professional and craft employees in the employ of the City; excluding all supervisory, managerial, executive and confidential employees"; that said professional and craft employees are not included in any existing unit; that the Association has also requested the Commission to conduct a separate election among said professional employees, as well as a separate election among such craft employees, to determine whether the employees in each of said voting groups desire to combine into a single collective bargaining unit, and whether the employees in said voting groups desire to be represented by the Association for the purposes of collective bargaining; and that the Association contends that the occupants of the following classifications are professional, and craft, as indicated:

<u>Professional</u>	<u>Craft</u>
Public Health Nurse I	Chief Inspector/Building Inspector
Junior Public Health Nurse	Electrical Inspector
City Assessor	Plumbing & Sanitary Inspector/Sealer
Data Processing Analyst	of Weights and Measures
City Engineer	Plumbing Inspector (Part-time)
Engineering Technician II	
Engineering Technician I	
Engineering Aide	

5. That during the course of this proceeding the City moved that the Commission dismiss the petition filed by the Association, contending that (a) the Association has failed to reference a sufficient showing of interest executed by the employees it desires to represent for the purposes of collective bargaining, and that said employees have no interest in unionization; (b) the Association is not a labor organization within the meaning of the Municipal Employment Relations Act; and (c) the unit sought by the Association is not an appropriate collective bargaining unit within the meaning of said Act.

6. That during the course of the hearing the parties stipulated that the positions of Public Health Nurse II, Public Health Nurse I, and Junior Public Health Nurse, all employed in the City's Health Department, were professional positions and that the Public Health Nurse II, at the time of the hearing 1/ occupied by Camille Prondzinski, was a supervisory position; and that Josephine Smith occupies the position of Public Health Nurse I, and that Lois M. Barutha, Rosalie Hersil, and Joan Hauski, occupy the positions of Junior Public Health Nurse.

7. That the City contends, contrary to the Association, that the City Assessor, John Koniar, is not a professional employee, and, in addition, that he is a managerial and a supervisory employee; that the City Assessor is responsible for maintaining records and accounts of all properties located in the City which are subject to taxation, by maintaining records as to ownership, legal description, and other data necessary to evaluate and assess such properties for tax purposes; that the City Assessor assigns work to the Assistant City Assessor, Thomas Meszaros, and to a Secretary, Betty Komis; that Meszaros is employed by an individual contract of employment, working twenty hours per week, and said contract will terminate in June, 1982; that Meszaros' employment contract resulted from the recommendation of Koniar to the City Council, and the determination of extending or entering into a new contract with Meszaros will be subject to the recommendation of Koniar; that Koniar effectively recommended the hiring of Komis, and further recommended that she be retained following the completion of her

1/ Unless noted otherwise persons named herein occupied the position referred to at the time of the hearing herein.

probationary period; that Koniar prepares the budget for the Assessor's office, except for salaries, and he approves vacations, sick leave, and other forms of absences of Komis; and that the City Assessor performs duties in sufficient degree or combination to be a supervisory employee.

8. That the City's Data Processing Department maintains four positions, consisting of the Data Processing Analyst, occupied by Sally Liska; two Data Entry Operator positions, 2/ and a part-time Programmer position; that the Association contends, contrary to the City, that Liska is a professional employee and the City argues that Liska occupies a managerial and supervisory position; that Liska reports to and receives work assignments from the City Clerk; that Liska develops a budget (exclusive of salaries) for the Data Processing Department, which budget is subject to review and changes by the City Clerk; that Liska has no authority to expend unallocated funds set forth in the departmental budget; that while Liska consults with the City Clerk, the latter maintains basic control over the formulation of departmental policy and budget; that Liska has no authority to effectively recommend the hiring, promotion, transfer, discipline or termination of any employee of the City; that Liska assigns work to the Data Entry Operators, but not to the Programmer; that the City Clerk supervises Liska, the Data Entry Operators and the Programmer; that Liska spends a majority of her time performing the following duties: (a) implementing and operating an IBM System 34 Computer, (b) writing programs utilizing RPG program language, (c) insuring that the computer system's software and hardware are operating properly, (d) performing basic accounting work, journal and ledger entries, and (e) training employees in the use of equipment and in program operation; that the qualifications for the position occupied by Liska include the ability to operate an IBM System 34, utilizing RPG language, as well as knowledge of appropriation and budget principles; that the City prefers that the Data Processing Analyst have a college degree, with two or more years of modern accounting theory and practice; that Liska will receive a degree in Management in December, 1981, and she has taken courses in data processing as well as having received training from IBM in the use and operation of the City's computer; that Liska does not participate to a significant degree in the formulation, determination or implementation of management policy nor does she perform duties in sufficient degree or combination to be a supervisor; and that the job responsibilities of Liska are predominantly intellectual and varied in nature, involve the consistent exercise of judgment, cannot be placed on a standardized basis, and require knowledge of an advanced type customarily acquired through formal higher education.

9. That the Engineering Department of the City, a division of the Department of Public Works, has five positions, consisting of the City Engineer, occupied by Lee Olson; the Engineering Technician II, occupied by Marvin Lisowski; the Engineering Technician I, occupied by Richard Simuncak; the Engineering Aide, occupied by Joseph Janicek; and a Cooperative Education student position; that the parties, during the hearing, agreed that the position of City Engineer is a professional position, the occupant of which must be a Registered Engineer with a degree in Civil Engineering, and that Olson meets both of said requirements; that the City, contrary to the Association, contends that Olson is a managerial/supervisory employee; that Olson reports to the Director of Public Works; that Olson does not possess effective authority to hire, promote, transfer, discipline or discharge employees; that vacations, sick leave, and other forms of absences of Engineering Department employees are approved by the Director of Public Works; that Olson directs the day-to-day operation of the Engineering Department, and in that regard routinely assigns work to employees in the Department, subject to the final authority of the Director of Public Works; that Olson spends a majority of his workday on the following activities: (a) directing the technical implementation of public works and establishing plans and specifications for sewer, water, streets, alleys, sidewalks, street lighting, tree planting, public buildings and open space land use projects; (b) determining that plans for all types of development are in adherence with official map, zoning and land division requirements; (c) drafting preliminary and final construction contracts and public work project resolutions for use by the City Attorney in presentations to the City Council; and (d) drafting reports on all project locations, including sizes and assessments for the signature of the Director of Public Works; that Olson, as City Engineer, receives approximately \$300 per month in salary over and above that received by the Engineering Aide II; that the City Engineer does not have the

2/ Included in the clerical bargaining unit represented by AFSCME.

authority to commit the employer's resources, nor does the City Engineer have the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget; that although the City Engineer may provide input and consult with Rutkowski concerning departmental needs and policy, the Director maintains basic control over formulation of management policy and the departmental budget; and that Olson does not perform duties in sufficient degree or combination to be a supervisor, nor does he participate to a significant degree in the formulation, determination or implementation of managerial policy.

10. That the Association, contrary to the City, contends that the positions of Engineering Technician II, Engineering Technician I and the Engineering Aide are professional positions; that the qualifications for the Engineering Technician II position require a degree in Civil Engineering from an accredited school of engineering, or five years of experience in municipal engineering operations; that the present incumbent of said position, Lisowski, has been employed by the City for twenty years, commencing his employment in the Department as a part-time Engineering Aide, progressing to full-time Aide, Junior and Senior Engineer, and then to his present position, where he earns approximately \$1895 per month; that included among Lisowski's duties and responsibilities are the following: (a) directs field crew operations; (b) develops specifications for storm, water main, grading and concrete; (c) designs system plans for sanitary and storm sewers, pavements, water mains, as well as electrical systems, such as street lighting; (d) performs surveying duties, staking boundaries and bench mark circuits; (e) ensures that contractors are correctly installing materials and that workmanship thereof is proper; (f) inspects storm sewers, concrete water mains and grading; and (g) prepares data for use in litigation with respect to easements and right-of-ways; that all of such work done by Lisowski is subject to review by the City Engineer; that in addition to his work experience, Lisowski has had one year of college training in civil engineering, has taken technical school courses in highway design and construction, and has attended courses and seminars relating to civil engineering; and that the job responsibilities of Lisowski are predominantly intellectual and varied in nature, cannot be placed on a standardized basis and require knowledge of an advanced type customarily acquired through formal higher education.

11. That Richard Simuncak has occupied the Engineering Technician I position for approximately ten years; and prior thereto occupied positions of Laborer, Equipment Operator, Engineering Aide, and Junior Engineer; that as an Engineering Technician I Simuncak has the following responsibilities: (a) inspection of sewer, water, and concrete construction, curb and gutter installations (b) under the direction of the City Engineer, draws plans and designs for sidewalk layout and parking lot projects; (c) prepares cost estimates of said various projects; (d) responds to inquiries from contractors concerning locations of utilities; (e) issues street opening permits; and (f) maintains records of City projects; that the position requires two years of civil engineering in an accredited school of engineering or four years of experience in municipal engineering operations; that Simuncak has a high school education and has attended surveying and construction seminars; and, that the job duties of Simuncak do not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

12. That Janicek, the Engineering Aide, has been employed by the City in the latter position for some eight years, and prior to occupying such position, Janicek has been a Laborer, and part-time Engineering Aide; that the City's recommended qualifications for the position include completion of high school and two years experience in municipal engineering operations; that Janicek has one year of college education in business management, and has taken math, drafting, and graphics courses at the Milwaukee Area Technical College; that the duties of the Engineering Aide position include: (a) field engineering, preliminary surveying; (b) assisting in the preparations of plans and specifications; and (c) maintaining records of current land divisions and other records of the Engineering Department; and that the job duties of Janicek do not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

13. That the positions of Chief Inspector/Building Inspector (hereinafter referred to as the Chief Inspector), the Electrical Inspector, the Plumbing and Sanitary Inspector/Sealer of Weights and Measures, and the part-time Plumbing Inspector, together with a part-time Secretary, are all employees of the City's Inspection Department; that the City, contrary to the Association, contends that

the Chief Inspector is a managerial/supervisory employee; that Ray Otto occupies the position of Chief Inspector, who for approximately twenty-five years was a journeyman carpenter, and during a portion of said period was a carpenter contractor; that, by City ordinance, the Chief Inspector is charged with the direct administration of the Inspection Department, and acts as the inspection consultant to all City departments, serving as an advisor to the City Council, and exercising administrative control over all requisitions for supplies, payrolls, vouchers and other routine documents, as well as with respect to budget estimates relating to the Department; that Otto receives approximately \$100 per month more than is received by the Electrical Inspector, and approximately \$300 per month more than is received by the full-time Plumbing Inspector; that the Chief Inspector effectively hired the Department's part-time Secretary and participated in the hiring interview of the part-time Plumbing Inspector; that the Chief Inspector performs duties in sufficient degree or combination to be a supervisory employee; that the City, contrary to the Association, contends that the Electrical and Plumbing Inspectors are not craft employees, and, in addition, contends that they are managerial employees; that the positions of Electrical and Plumbing Inspectors are required by the City to be master electrician and master plumber, respectively; that their duties are limited to inspection of electrical and plumbing work done by other City employees to determine whether City and State codes are complied with; that the position of Electrical Inspector is occupied by Florian Tomkowiak; that the regular Plumbing Inspector/Sealer of Weights and Measures is Charles Freeman, who is on a medical leave of absence and that the plumbing inspection duties previously performed by Freeman are being performed by John Tomczyk, who is currently the part-time Plumbing Inspector; that while they develop a budget for their operating needs, except for salaries, such preparation is normally routine; that said Inspectors spend a majority of their time in inspection duties; and that the Inspectors do not participate to a significant degree in the formulation, development or implementation of management policy.

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

CONCLUSIONS OF LAW

1. That since neither the provisions of the Municipal Employment Relations Act, nor the rules set forth in the Wisconsin Administrative Code, require that a petition requesting the Wisconsin Employment Relations Commission to conduct an election among unrepresented municipal employees to determine their bargaining representative, pursuant to Section 111.70(4)(d) of the Act, for the purposes of collective bargaining, be supported by any showing of interest executed by any such unrepresented employees, the Wisconsin Employment Relations Commission has jurisdiction to entertain and process the petition filed herein by Cudahy Technical and Health Services Association.

2. That, since the Cudahy Technical and Health Services Association, by the filing of the instant petition, claims to represent employees of the City of Cudahy for the purposes of collective bargaining, said Association is a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act.

3. That, pursuant to Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, all professional and craft employees in the employ of the City of Cudahy, excluding managerial, supervisory and confidential employees, may constitute a single appropriate collective bargaining unit, and, further, pursuant to said statutory provision, all otherwise eligible professional employees may constitute a separate appropriate bargaining unit, and that all otherwise eligible craft employees may also constitute a separate appropriate bargaining unit.

4. That the individuals in the employ of the City of Cudahy occupying the position of Public Health Nurse II, City Assessor, and Chief Inspector/Building Inspector, are supervisors within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

5. That individuals in the employ of the City of Cudahy occupying the positions of Public Health Nurse I, Junior Public Health Nurse, Data Processing Analyst, City Engineer and Engineering Technician II are professional employees within the meaning of Section 111.70(1)(l) of the Municipal Employment Relations Act, and that, however, individuals in the employ of the City of Cudahy occupying the positions of Engineering Technician I and Engineering Aide are not professional employees within the meaning of said section of the Act.

6. That individuals in the employ of the City of Cudahy occupying the positions of Electrical Inspector, Plumbing and Sanitary Inspector/Sealer of Weights and Measures, and regular part-time Plumbing and Sanitary Inspector are craft employees within the meaning of Section 111.70(1)(f) of the Municipal Employment Relations Act.

That 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

IT IS HEREBY DIRECTED that elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in the following Voting Groups:

Voting Group No. 1

All regular full-time and regular part-time professional employees in the employ of the City of Cudahy, excluding managerial, supervisory and confidential employees, for the purposes set forth below.

Voting Group No. 2

All regular full-time and regular part-time craft employees in the employ of the City of Cudahy, excluding managerial, supervisory and confidential employees, for the purposes set forth below.

The employees in Voting Groups No. 1 and No. 2, who were employed on March 31, 1982, except such employees as may prior to the election quit their employment or be discharged for cause, shall be given the opportunity to determine:

- (1) Whether a majority of the employees in each of said voting groups desire to be included in a single collective bargaining unit consisting of employees in both voting groups;
- (2) Whether a majority of such employees voting in each of said voting groups desire to be represented by Cudahy Technical and Health Services Association for the purposes of collective bargaining with the City of Cudahy on matters relating to wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 31st day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

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

Background

The instant proceeding was initiated on May 26, 1981, by the filing of a petition on behalf of the Cudahy Technical and Health Services Association, signed by Lee O. Olson, who occupied the position of City Engineer in the employ of the City of Cudahy. Said petition consisted of certain information set forth on the form utilized and prepared by the Commission entitled "PETITION FOR ELECTION INVOLVING MUNICIPAL EMPLOYEES". Therein Olson alleged that a majority of the employees in the claimed appropriate bargaining unit desired to organize and bargain with the City, and that the City had not recognized the Association as the collective bargaining agent for the described employees. The face of the petition also included a statement to the effect that "more than 30% of the employees in the proposed unit have signed the petition seeking the election." Attached to the petition, and made part thereof, and marked Exhibit B, was a document, undated, containing the written signatures of twenty individuals, headed by the signature of Olson. Also attached to the petition, as Exhibit A, was the following list of positions, claimed by the Association to constitute the bargaining unit covered by the petition:

- City Assessor
- Data Processing Analyst
- Secretary - Deputy City Clerk
- Public Health Nurse II
- Public Health Nurse I
- Junior Public Health Nurse
- City Engineer
- Engineering Technician II
- Engineering Technician I
- Engineering Aide
- Department of Public Works - Cost and Records Clerk
- Department of Public Works Foreman
- Secretary to Department of Public Works Director
- Waterworks Superintendent
- Assistant Waterworks Superintendent
- Public Works Foreman
- Chief Inspector
- Plumbing and Sanitary Inspector/Sealer of Weights and Measures
- Electrical Inspector - Maintenance
- Police Clerks

Hearing in the matter was originally scheduled for July 7, 1981 and subsequently postponed to September 28, 1981. Hearing commenced on the latter date and was continued on September 29, October 29 and November 11, 1981. The transcript of record consists of 652 pages. Over forty exhibits were made part of the record. Final briefs were filed with the Commission in January, 1982.

At the outset of the proceeding the City moved that the Commission dismiss the petition on the basis that the "showing of interest" was improper since it was not dated, that the Association was not a labor organization within the meaning of the Municipal Employment Relations Act (MERA), and that the unit in which an election is sought is not a proper unit within the meaning of MERA.

Necessity of Showing of Interest

There is no provision in MERA which requires that a petition requesting an election among municipal employees must be supported by any showing of interest executed by any of the employees covered by said petition. Section 111.70(4)(d)5 of MERA provides as follows:

Questions as to representation may be raised by petition of the municipal employer or any municipal employee or any representative thereof. Where it appears by the petition that a situation exists requiring prompt action so as to prevent or terminate an emergency, the commission shall act upon the petition forthwith. The fact that an election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the commission that sufficient reason for another election exists.

It has long been established Commission policy that where a petition for an election has been filed involving a claimed appropriate bargaining unit, which is not presently represented for the purposes of collective bargaining, the Commission does not require that such petition be supported by any of the employees in the unit involved. 3/ Despite the fact that such a showing of interest was not necessary, the petition herein was accompanied by an attachment (Exhibit B) containing the signatures of twenty individuals. The City's objection to such showing, while in this case not necessary to support the petition, 4/ was the fact that such document was not dated. Since the Commission does not require a showing of interest here, since a majority of the employees are not in any existing certified or recognized bargaining unit, we see no reason to rule on the "validity" of said showing of interest. Further, it should be noted that during the hearing, after the Association learned that certain of the employees it desired to be included in the unit sought in the petition were possibly eligible to be included in existing units, it relinquished any claim that said positions should be included in the unit or units found by the Commission to be appropriate herein. Further discussion with regard thereto will follow in this memorandum.

Labor Organization Status

The City also would have the Commission dismiss the petition, contending that the Association is not a labor organization within the meaning of MERA. Section 111.70(1)(j) defines the terms "labor organization" as follows:

. . . any employee organization in which employees participate and which exists for the purpose in whole or in part of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment.

As to the nature and purpose of a "labor organization" the Commission has held as follows:

It is significant to note that the Legislature did not see fit to impose any formal requirements on a labor organization, such as a requirement that it have a constitution or by-laws, or that it admit employees to formal membership, or that it charge employees dues. The only requirement set out, other than the requirement that the organization have the appropriate intent, is that employees participate; there is no requirement that the nature of the participation be any more formal than that desired by the employees themselves. 5/

Here, on the face of the petition filed with the Commission, the Association claims to represent employees for the purposes of collective bargaining, and therefore, the City's basis for the dismissal of the petition on the lack of labor organization's status must fall.

The Appropriate Unit or Units

During the course of the hearing the Association amended the description of the bargaining unit or units it seeks to represent to include only professional and craft employees, either in a single unit, or in a separate professional and a separate craft unit, in accordance with the desires of said employees as expressed in elections conducted by the Commission. The City contends, contrary to the Association, that the City's registered nurses, who occupy the positions of Public Health Nurse I and Junior Public Health Nurse, do not share a community of interest with the other City employees which the Petitioner seeks to represent based on their separate supervision and their distinct work place. Further, the City argues that the registered nurses have been previously identified as an

3/ Wauwatosa Board of Education (8300-A) 2/68; City of Medford (13609) 5/785.

4/ Generally, where the Commission requires a showing of interest, the determination as to the sufficiency of such showing is administratively determined by the Commission. We deem it unnecessary to determine whether Exhibit B attached to the petition was intended as a showing of interest, or was intended to reflect additional signers of the petition, as set forth on the face of the petition.

5/ Manitowoc County (10899) 3/72.

appropriate bargaining unit by the Commission. 6/ In establishing appropriate collective bargaining units the Commission is required to consider and apply Section 111.70(4)(d)2.a. of MERA, which reads as follows:

The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and non-professional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot.

The record demonstrates that the four registered nurses in the City's Health Department, the City Engineer, the Engineering Technician II and the Data Processing Analyst as well as the Electrical Inspector and the Plumbing Inspector currently receive the same fringe benefit plans for vacation, longevity pay, sick and funeral leave, maternity leave and holidays. With the same fringe benefits among the employees in the unit sought and the relatively small number of employees (approximately nine) in an overall unit of professional and craft employees, the Commission deems it inappropriate to establish a separate unit of registered nurses, especially viewed against the mandate of anti-fragmentation.

Thus, the employees found to be professional and craft will be given separate elections to determine whether they desire to merge both groups of employees into a single bargaining unit. If either of said groups votes against such merger, there will be established two separate bargaining units. If both groups vote in favor of a single unit, the ballots cast by the employees in both groups with respect to their choice of bargaining representative will be co-mingled and counted. Should either group vote against a merged unit then the representation ballots cast by employees in each of the units will be tallied separately.

Issues as to Managerial and Supervisory Employees

During the course of the hearing, the City, contrary to the Association, contended that the occupants of the positions of City Assessor, Data Processing Analyst, City Engineer and Chief Inspector/Building Inspector are managerial and/or supervisory employees. At the hearing the parties stipulated that the occupant of the Public Health Nurse II position is a supervisor and there excluded from any bargaining unit established herein. The City, during the course of the hearing, also claimed that the Electrical and Plumbing Inspectors were also managerial.

Except as to fire fighting personnel, MERA, in Section 111.70(1)(o)1, provides as follows:

As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Commission, in determining whether the statutory criteria of Section 111.70(1)(o)1 are present in sufficient degree or combination to warrant the conclusion that the position is supervisory, considers the following criteria:

6/ City of Cudahy (16184) 3/78, wherein the parties stipulated that all regular full-time and regular part-time registered nurses of the City constituted an appropriate unit, and wherein said employees rejected representation.

1. The authority to recommend effectively 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 skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment and discretion exercised in the supervision of employees. 7/

Not all of the above factors considered by the Commission in determining supervisory status need be present, but if they appear in a sufficient combination the Commission will find an employee to be a supervisor. 8/ In addition, a finding that a position is supervisory may be based upon an employee's exercise of authority over part-time, temporary or even casual employees outside the bargaining unit with n which the position is sought to be included. 9/

We are satisfied that the City Assessor and the Chief Inspector/Building Inspector perform duties and responsibilities in sufficient combination and degree to warrant the conclusion that the occupants of said positions are supervisory employees within the meaning of MERA. However, neither the City Engineer, nor the Data Processing Analyst perform duties and responsibilities sufficient in degree and/or combination to warrant the conclusion that the occupants of such positions are supervisors. While the City claimed that the Data Processing Analyst, the City Engineer, and the Electrical and Plumbing Inspectors were also managerial employees, the evidence with respect to their duties and responsibilities do not support such a conclusion with respect to any of such positions as they do not participate to any significant degree in the formulation, determination, and implementation of management policy nor do they possess effective authority to commit the City's resources. 10/ Thus we find them to be "employees".

The Issue With Respect to Professional Employees

During the hearing the parties agreed that the positions of City Engineer, Public Health Nurse, and Junior Public Health Nurse were professional positions. The City, contrary to the Association, argues that the Data Processing Analyst, Engineering Technician II and I, and the Engineering Aide are non-professional positions. Section 111.70(1)(1) of MERA defines a "professional" employee as:

1. Any employee engaged in work:
 - a. Predominantly 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

7/ City of Milwaukee (6960) 12/64; City of Manitowoc (18590) 4/81.

8/ Dodge County (17558-C) 2/3/81; City of Lake Geneva (18507) 3/81.

9/ City of Lake Geneva, Ibid.

10/ City of Milwaukee (12035-A) 3/76.

2. Any employee 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 of a professional person to qualify himself to become a professional employee as defined in subd. 1.

The Commission has held that the above definition does not limit professional employees to only those possessing college degrees 11/ and has followed said explicit criteria of MERA and not determined professional status solely on the basis of state certification and licensing. 12/

The varied nature of duties, regular use of exercising judgment and discretion, non-standardized output of work, and skills and knowledge necessary to perform the problem solving duties of the Data Processing Analyst position, in addition to the actual training and experience possessed by the incumbent, are sufficient to convince the Commission that said Analyst position is a professional position.

We are satisfied that the education and/or experience requirements for the Engineering Technician II position are such to justify the conclusion that the position is occupied by a professional within the meaning of MERA. However, neither the positions of Engineering Technician I nor the Engineering Aide require such education or experience and thus those positions are not professional.

The Craft Employee Issue

Section 111.70(1)(f) defines a "craft employee" as ". . . a skilled journeyman craftsman, including his apprentices and helpers, but shall not include employees not in direct line of progression in the craft." The City contends that neither the Electrical nor the Plumbing Inspectors are craft employees on the basis that they are not actively working at the craft involved. The Commission has held that City Inspectors who are required to have journeyman status constitute craft employees. 13/ Since the job requirements for said positions require the incumbents to have journeyman status in the craft involved in their duties, we find it almost incomprehensible to consider the City's position as having any merit whatsoever, and we therefore conclude that the occupants of said positions are craft employees within the meaning of MERA.

The Composition of the Voting Groups

The eligible positions included in the two voting groups are as follows:

Voting Group No. 1 - Professionals

Public Health Nurse I
 Junior Public Health Nurse
 Data Processing Analyst
 City Engineer
 Engineering Technician II

Voting Group No. 2 - Craft

Electrical Inspector
 Plumbing & Sanitary Inspector/
 Sealer of Weights and Measures
 Plumbing Inspector (Part-time)

The Election Procedure

The employees in each of the above voting groups will be given two ballots for the purpose of (1) determining whether the majority both the of eligible professional and the eligible craft employees desire to be included in a single bargaining unit, and (2) determining whether said employees desire to be represented by the Association for the purpose of collective bargaining. Ballots for the purpose of unit determination will be different colors for each of the voting groups. Prior to casting their ballot, employees in both voting groups will be instructed to place their representation ballots in a furnished blank envelope,

11/ Milwaukee County (8765-E, 14786) 7/76.

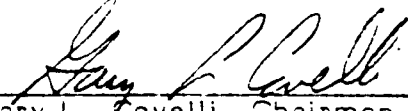
12/ Kenosha Vocational, Technical and Adult Education District (14381) 3/76.

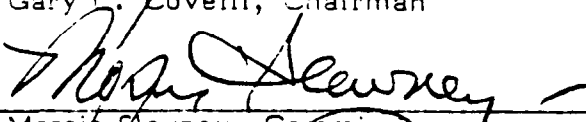
13/ City of Kenosha (12610) 4/74; City of Appleton (11784) 4/73.

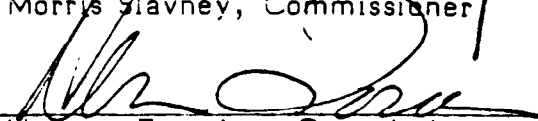
marked to identify their voting group, and to seal same before depositing the envelope in the ballot box. The unit determination ballots of the two voting groups will be tallied separately. Should a majority of the employees in both voting groups vote in favor of a single combined unit, the representation ballots cast by both voting groups will be co-mingled and counted in a single tally. Otherwise, the representation ballots cast by each of the voting groups will be separately tallied.

Dated at Madison, Wisconsin this 31st day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner