

4. That on June 4, 1980 the Association filed the petition and on July 24, 1980, an amended petition, initiating the instant proceeding wherein it requested the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act among full-time and part-time employees of the Water Utility, to determine whether said employees desired to be represented by the Association for the purposes of collective bargaining.

5. That in the late 1930's Water Utility employees organized to form Water Department Employees, Local 480, AFSCME; that in 1959 Local 480 voted to join and consolidate into Local 60 with the following Unions: Madison Parks Employees (Local 60), Traffic Engineers (Local 1573), Administrative and Clerical Employees (Local 520), and Madison Board of Education Employees (Local 710); that from at least 1946 to 1959 the City did meet and confer with Locals 480, 1573, and 520 and with Local 60, all AFSCME Locals, in a representative capacity with respect to wages and conditions of employment; that from at least 1959 the City did meet and confer with Local 60 over succeeding labor agreements which were either reflected in enacted ordinances or bilateral collective bargaining agreements; that at least from December 9, 1969, the City voluntarily recognized Local 60 as the exclusive bargaining representative of employees, in a single general unit, in various classifications in departments and divisions of the City, as set forth in the wage appendix of the parties' then-existing labor agreement, including positions in the Water Utility; that on November 17, 1970, following a representation election, Local 60 was certified by the Commission as the exclusive bargaining representative of all full-time classified clerical and stenographic employees, including office equipment operators, in the employ of the City, excluding confidential and supervisory employees and all other employees, hereinafter referred to as the clerical unit; that on October 15, 1973, following a representation election, Local 60 was certified as the exclusive bargaining representative of all seasonal employees in the employ of the City, excluding all other employees, supervisors and executives, hereinafter referred to as the seasonal unit.

6. That in said bargaining relationship with Local 60, after 1969, the City and Local 60 negotiated successive labor agreements covering said classifications, in twenty-two agencies, including the Water Utility, including a labor agreement effective January 1, 1980 through December 31, 1980, covering the following positions, in a "general" unit, employed in the following departments or agencies:

Assessor

Property Appraiser I
Property Appraiser II
Property Appraiser III
Property Appraiser IV
Drafting Technician I

Building Inspection

City Sealer
Code Enforcement Officer I
Code Enforcement Officer II
Code Enforcement Officer III
Custodial Worker III
Electrical Inspector
Heating Inspector
Plumbing Inspector
Weights and Measures Inspector
Zoning Administrator Assistant
Custodial Worker II
Maintenance Mechanic I
Inspector's Aide

Civic Center

Maintenance Stagehand
Maintenance Mechanic I
Custodial Worker II
Custodial Worker III

Fire

Auto Mechanic
Custodial Worker II
Fire Alarm Operator
Master Mechanic

Health

Chemical Analyst I
Chemical Analyst II
Chemical Analyst III
Dental Health Specialist
Laboratory Aide
Laboratory Assistant I
Microbiologist II
Microbiologist III
Public Health Field Assistant II
Public Health Sanitarian II
Public Health Technician

Housing & Community
Development

Building Maintenance Worker
Laborer
Maintenance Worker

Parking Utility

Drafting Technician II
Engineering Technician I
Parking Meter Mechanic
Parking Operation Leadworker
Parking Ramp Attendant
Parking Services Worker
Parking Maintenance Worker I
Parking Maintenance Worker II

Parks

Arborist I
Arborist II
Assistant Cemetery Manager
Athletic Field Caretaker
Concession Manager
Construction Leadworker
Drafting Technician II
Dredge Operator II
Equipment Operator I
Equipment Operator II
Equipment Operator III
Forestry Inspector
Greenskeeper I
Greenskeeper II
Head Animal Keeper
Laborer
Maintenance Mechanic I
Maintenance Mechanic II
Mower Shop Mechanic
Project Coordinator
Public Works Lead Worker
Public Works Maintenance Worker I
Public Works Maintenance Worker II
Public Works Maintenance Worker III
Storekeeper
Welder
Zoo Attendant

Police

Animal Control Officer
Police Dispatcher
Parking Monitor
Automotive Service Worker

Purchasing

Buyer I

Traffic Engineering

Communication Technician I
Communication Technician II
Communication Technician III

Drafting Technician II
Engineering Aide
Maintenance Mechanic I
Maintenance Painter
Operations Clerk
Public Works Maintenance Worker III
Sign Painter
Storekeeper
Traffic Control Maintenance Worker
Traffic Operations Lead Worker
Traffic Signal Lead Worker
Traffic Signal Electrician I
Traffic Signal Electrician II
Traffic Signal Maintenance Worker
Video Technician

Treasurer

Personal Property Tax Coordinator

Water

Auto Mechanic
Custodian Worker III
Dispatcher
Drafting Technician II
Equipment Operator I
Equipment Operator II
Equipment Operator III
Engineering Technician I
Water Hydrant Inspector
Inspector Lead Worker
Maintenance Electrician I
Maintenance Mechanic I
Maintenance Mechanic II
Meter Reader
Meter Records Clerk
Operations Clerk
Public Works Maintenance Worker I
Public Works Maintenance Worker II
Public Works Maintenance Worker III
Public Works Maintenance Worker IV
Public Works Lead Worker
Water Meter Installer
Water Meter Mechanic
Water Meter Repair Supervisor
Water Meter Specialist
Water Services Inspector
Water Works Maintenance Worker
Water Works Operator I
Water Works Operator II
Master Mechanic
Water Construction Inspector

Welfare

Legal Settlement Technician

7. That since 1970 the City has engaged in negotiations for collective bargaining agreements with Local 60 covering employees in both the general and clerical units; that since 1973 the City has negotiated for collective bargaining agreements with Local 60 covering said employees, as well as for employees in the seasonal unit; that from 1973 to 1980 the City bargained with Local 60, which represented, through a joint committee, the employees of the clerical unit, seasonal unit and general unit; and that the parties reduced their accords in a single written collective bargaining agreement covering the employees in said three units; and that the City also bargains with the Laborers' Union, AFL-CIO for blue collar employees, in a certified unit of Street Department employees and maintains a contractual relationship through voluntary recognition, with labor organizations representing police and firefighter personnel in the employ of the City.

8. That the City of Madison Board of Water Commissioners, hereinafter referred to as the Water Utility Board, establishes general policy matters for the Water Utility; that the Water Utility Board has never participated in either grievance processing or collective bargaining negotiations with respect to wages, hours and working conditions of Water Utility employees; that the City's Office of Labor Relations has had the exclusive responsibility, at least from 1973, to negotiate and administer collective bargaining agreements between the City and Local 60 covering the units represented by Local 60, including the general unit, which includes Water Utility employees, as well as other blue collar, technical and white collar employees; and that the ratification of said agreements by the City has always been as party signator subject to the approval of the City's Common Council, without any review by the Water Utility Board or any other departmental entity of the City.

9. That the Water Utility is wholly owned and operated by the City; that the Water Utility has a distinct mission of operating a water supply and distribution system to meet the needs of its customers; that the Water Utility is subject to regulations covering its operations and services by the Wisconsin Public Service Commission, the Wisconsin Department of Natural Resources, and the United States Environmental Protection Agency; that the City exercises substantial control over the Water Utility and such control is substantially similar to that exercised over other City Departments in which employees included in the general unit, clerical unit and seasonal unit are employed; that such City control over the Water Utility includes such matters as the Water Utility's budget and finances, hiring and authorization of personnel, assets, purchasing, general management, and controls relating to source of revenue, such as City Council's approval of special assessments for extensions of water mains, approval for rate increase requests which the Utility Board presents to the Public Service Commission and approval of revenue bonds to finance capital projects of the Water Utility; and that staffing levels for the Water Utility are determined by the City's Common Council through its review and adoption of the Water Utility's budget, and manning levels are established by the City for the Water Utility through its Labor Relations Department; that the Water Utility's operating expenses and capital expenditures are financed by its utility fees to users based upon rates for water usage regulated and approved by the Public Service Commission; and that the Public Service Commission regulates the accounting system to be used by the Water Utility and regulates the level and standard of service to users.

10. That a majority of the Water Utility employees work primarily out of two locations, 110 South Peterson Street and 525 East Main Street; that said work locations are not shared with any other City employees; that Water Utility employees work throughout the geographic area of the City; that, inasmuch as the Water Utility provides services to the municipalities of the Town of Madison, Shorewood Hills, Maple Bluff and Sanitary District No. 2, Water Utility employees may perform work in said municipalities lying outside the City boundaries; that no other City employees in the general, clerical or seasonal bargaining units perform work outside of the geographic boundaries of the City; that Water Utility employees are supervised by the Water Utility Manager, who reports directly to the Mayor and the Common Council; and that, except in rare cases of temporary transfer of the general unit employees to the Utility, there is little interchange of Water Utility employees with employees of other departments of the City.

11. That the Water Utility currently employs approximately 110 employees; that of said employees, approximately 81 are included in the general unit covered by 27 position titles; that 14 of said 27 position titles constitute position titles which are also currently used by other City agencies; that six Water Utility employees are currently included in the clerical unit under three position titles, which clerical titles are also used by other City agencies; that position descriptions for job titles are developed by the City's Division of Personnel, after consultation with the City's various agencies; that although no two employees actually perform exactly the same duties, when duties are sufficiently similar in nature, the City's Division of Personnel develops a common job description; and that during the five year period between July, 1975 and October, 1979, 17 City employees from other agencies have either been transferred or promoted to positions in the Water Utility; and that during said period of time 8 Water Utility employees either transferred or were promoted to positions in other City agencies.

12. That the blue collar and clerical employees employed in the Water Utility, covered by 30 position titles, share a sufficient community of interest with the remaining blue collar and clerical positions in the general unit and clerical unit occupied by employees currently represented by Local 60, so as to be appropriately included in a single unit with the remaining employees of the general

unit; that the mere existence of separate physical facilities for the Water Utility, out of which the employees start their workday, the fact of separate supervision and the provision for primary funding of Water Utility operations and capital expenditures through user fees established by the Public Service Commission upon the application of the Utility Board, all constitute insufficient reasons for severing the overall, voluntarily recognized, general unit; and that, in light of the City Council's control over the Water Utility financial and personnel matters, and the substantial number of job position titles of both blue collar and clerical employees common to the Water Utility agency and to the other residual City agencies covered by the general unit, the establishment of a separate and single unit of Water Utility employees would constitute undue fragmentation of bargaining units.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

1. That all full-time and all part-time employees employed in the Water Utility of the City of Madison does not constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

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

ORDER OF DISMISSAL

That the election petition filed herein by the Madison Water Utilities Employees Association be, and the same hereby is, dismissed. 1/

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli /s/
Gary L. Covelli, Chairman

Morris Slavney /s/
Morris Slavney, Commissioner

Herman Torosian /s/
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.

(Continued on Page 6)

(Continuation of Footnote 1)

(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 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 OF DISMISSAL

Background:

The Association seeks a representation election among employees in a claimed appropriate unit consisting of "all full time and part-time employees of the Water Utility, excluding supervisory, managerial and confidential employees"; constructively including clerical 2/ and seasonal 3/ employees in which units the Commission previously conducted representation elections which led to the certification of Local 60 as exclusive bargaining representative; and constructively excluding all other employees in the general unit currently represented by Local 60.

Local 60 was permitted to intervene on the basis of its claim to be the (voluntarily recognized) exclusive bargaining representative of employees in a unit which includes employees in the Water Utility and that it is party to an existing collective bargaining agreement with the City, which covers said employees, as well as the remaining blue collar and technical employees in the general unit. Local 60 also represents the employees in the separately certified clerical and seasonal units, which units together with the general unit are covered by one collective bargaining agreement.

The historical background relating to the units represented by Local 60 is set forth in the Findings of Fact.

The remaining facts with respect to commonality of job titles between the Utility and general unit, physical location of employees, nature of supervision, integration of labor relations and personnel matters, uniqueness of the Water Utility with regard to revenue and state agency control and other indices reflecting the presence, or lack of "community of interest" between said groups, are also adequately covered in the Findings of Fact.

Positions of the Parties:

The Association contends that Water Utility employees have a community of interest separate and distinct from other employees in the general unit. The Utility employees work out of two work locations exclusively, an administration office and garage-general maintenance facility. No other employees utilize said facilities. They work under separate supervision and there exists no interchange between the Water Utility employees and the other agencies in the general unit, save for rare emergencies.

It argues that the few permanent transfers of employees between the Utility and the remaining department are no different than job changes between entirely different employers.

The Association contends that supervisors of the Water Utility process grievances short of arbitration. It argues that at least half the Water Utility employees do not share job titles with those possessed by other general unit employees in the other agencies. It points out that the record indicates that a number of employees in the higher classifications existing in the Water Utility possess unique skills in maintaining and improving the water distribution system, skills which are not manifested in other general unit positions. The Association contends that Water Utility employees, as the "tail" in a rather unwieldy and diverse general unit, have had their interests submerged in the larger group, without ever being able to vote as to whether they desired to be part of such an overall unit. It argues that Local 60, with the cooperation of the City through voluntary recognition, have amalgamated a hybrid inappropriate bargaining unit of technical, clerical, professional and blue collar employees and imposed same on the Water Utility group. It is a unit which the Commission would never have certified de novo. Therefore the presently recognized general unit should not enjoy the presumption of propriety.

2/ See Finding of Fact #5, supra and (WERC - No. 9949) 11/70.

3/ See Finding of Fact #5, supra and (WERC - No. 12086) 10/73.

The Association argues that the Water Utility is distinct from the other agencies of City government in that it is subject to special and unique regulation from State and Federal agencies. The PSC regulates the Utility's accounting procedures, dictates level of service to be furnished to users and the rates to be charged. The PSC also determines the level and standard of service to be afforded users. It argues that the Water Utility deals with the City at "arms-length" in the matter of purchases, pays for the wages and fringes of its employees out of revenues from users.

The Association asserts that the Commission, in seeking to strike the balance between stability of bargaining relationships and preserving the anti-fragmentation principle on one hand, as against the need for insuring that the unique interests of a special group of employees will not be subordinated in future bargaining to the interests of the larger unrelated group, should strike such balance in favor of the latter interest.

It argues that the purposes of the MERA can only be met by severing the employees of the Water Utility from their present bargaining unit and granting them the opportunity to vote separately as to whom they wish to retain as their bargaining representative.

Local 60 relies upon the statutory proscription of Section 111.70(4)(d)2.a., MERA, which mandates that the "Commission shall . . . whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force."

Local 60 points to the evolution of the incumbent union by consolidating the employees of various City bargaining units into one Union, which action was a harbinger of the aforementioned statutory policy. The employee members of that day had an opportunity to vote on such merger, and the merged Local members chose the leader of the old Water Utility Local to be president of Local 60.

It argues that Joint Exhibit 1, the existing labor agreement with the City, exemplifies the "community of interest between the Water Utility employees and the remaining employees represented by Local 60." In addition, Local 60 points out that Petitioner seeks to carve out and represent both blue collar and clerical employees, and amalgamation apposite to "separateness" as determined by the Commission and at odds with the separately certified clerical unit. 4/

Local 60 avers that the duties and skills of Utility employees are substantially comparable to the duties and skills of many employees occupying similar positions in other departments covered by the labor agreement. The record reflects a history of cross-department transfers and promotions which inure to the benefit of employees in both groups. It further argues that given a large City overall unit, the Petitioner cannot take solace from the existence of separate supervision and a separate work place for the Water Utility, when departmental specialization reflects same throughout the City agencies governed by Local 60's agreement.

Local 60 agrees that to establish the separate unit would cause the "havoc of fragmentation" as a precedent for further establishment of departmental units, and Local 60 urges that the Association petition be dismissed.

The City contends that its Common Council and Mayor exercise substantial control over the Water Utility; and that such control is not unlike that exercised over other departments where general unit employees are located. The record evidence reveals that the Common Council must approve both operating budget and the capital improvement budget for the Water Utility, and that the Water Utility submits its proposed rate increases covering user fees to the Common Council for approval prior to submission to the PSC. Similarly, the Council determines special assessments to be levied upon property to be benefited for water main extensions.

The City argues that the Mayor and Council, through its Administration and Personnel Division, controls the personnel affairs of the Water Utility as is true of all other departments, including employees in the general unit. Such control includes promulgating job descriptions, approval to fill job vacancies and for additional staff, administration of the selection process in hiring and certification of eligible candidates and administration of Workers Compensation

4/ Ibid, footnote 2.

and the various fringe benefits. All properties and fixed assets of the Water Utility are owned by the City. Though the Water Utility may have more independent latitude in making purchases than some agencies, it nevertheless utilizes the City's central purchasing agency in a manner similar to other agencies.

The City argues that the Water Utility is no more unique than the Parking Utility, Golf Course, Ice Arena and Civic Center, all being enterprise agencies, in that revenues generated by, i.e. the Water Utility are directly utilized by the Utility. Each of said other enterprise agencies employ individuals included in the general unit.

The City contends that the gravamen of the Association's severance argument is that regulation of the Water Utility by the PSC warrants the fracture of Utility employees from the general unit. However, other City activities and agency functions are subject to state regulation under statutes and administrative rules, such as qualifications for assessors, sanitarians, standards for sewerage systems, refuse disposal, elections and requirements for uniform traffic control devices. Surely, acceptance of the Association's contention would lead to considerable fragmentation of an overall bargaining unit for those agencies saddled with state regulation.

The City avers that control of the labor relations policy in matters affecting the wages and conditions of employment for employees of the Water Utility have been clearly and historically established by the City. The Water Utility Board has never been consulted by the City's labor relations negotiators in the process of bargaining labor agreements with Local 60 covering employees of the Water Utility and other general unit agencies.

In addition the record evidence clearly indicates that the duties and skills of a substantial number of Water Utility employees are similar in nature to those of other employees included in the general unit. Some 17 job positions in the Water Utility are common to employees of other agencies in the general unit. The duties and skills attending each, though not identical, are substantially comparable to the skills required for common job titles in the general unit.

With regard to the other Water Utility positions, the City argues that such Utility employees share a community of interest with other general unit employees, as reflected in the twenty-five personnel transactions within the past five years involving the transfers and promotions of employees into the Utility from other agencies of the general unit, and vice versa. Such transfers support the proposition that the skills and abilities applicable in one agency are equally recognized in the Water Utility, and the City urges that the Commission avoid the fragmentation implicit in the Association's position on separateness, and deny the petition.

Discussion:

In determining whether the unit sought by the Association is appropriate, the Commission must consider Section 111.70(4)(d)2.a. of MERA, which provides as follows:

The Commission shall determine the appropriate unit for the purposes of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such determination, the Commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

In applying the above statutory criteria in establishing appropriate bargaining units, the Commission has considered the following factors: 5/

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.

5/ See Kenosha Unified School District No. 1 (13431) 3/75; Lodi Joint School District No. 1 (16667) 11/78; Wisconsin Heights School District (17182) 8/79; Columbus School District (17259) 9/79.

3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

This Commission has interpreted Section 111.70(4)(d)2.a. to mean that at times there is a need for a mix of bargaining units which afford employees the opportunity to be represented in workable units by organizations of their own choosing, which may reasonably be expected to be concerned with the unique interests and aspirations of the employees in said units.

Therefore, the Commission has the obligation to strike a balance between stability on one hand with an "eye on the anti-fragmentation proscription of the statute", and the need for ensuring that the unique interests of a given group of employees will not be subordinated to the interest of another overall bargaining group. It is for that reason that the Commission examines the facts of each case to determine the appropriateness of a particular bargaining unit petitioned to be separate. 6/

The Association, to establish the concept of severance from the general unit and the appropriateness of a wall-to-wall unit of Water Utility employees only, primarily relies upon the peculiar public enterprise characteristics of the Water Utility, the special regulations of the PSC over the operation, the uniqueness of some of the higher-paid skilled positions at the Utility and the unwieldy mixture of clerical, technical, professional and blue collar positions in the existing general unit. However, in its amended petition, the Association seeks to represent all of the technical, clerical and blue collar employees in the Water Utility, on a departmental basis, which is no less a hybrid mixture of positions than that which exists in the voluntarily recognized general unit. If the Commission were to find such a claimed unit appropriate, the result would necessarily require the Commission to sever the clerical positions from the separately certified clerical unit 7/, which covers all of the clerical positions in all of the City agencies.

In Eau Claire County, (17488-A) 3/81, the Commission decided that a petition for a separate unit of clericals in a data processing department would cause undue "fragmentation" if the Commission were to sever such a group of clericals from an overall County unit of clericals, finding the unit inappropriate.

In contrast, the Commission in City of Franklin, (18208) 11/80 opted for separateness and decided to sever a voluntarily recognized clerical/blue collar unit and found the petitioned for "all clerical" unit appropriate. However, in that case the resulting appropriate unit was solely comprised of a homogeneous group of city-wide clericals, in contrast to the blue collar/clerical mix which the Association claims to be appropriate here.

The Association, in brief, makes a very cogent argument that the Commission would not certify de novo, as appropriate, a unit such as the general unit represented by Local 60. The Commission may very well agree with said proposition, but it has not been in the business of undoing the work of municipal employers and unions through contractual voluntary recognition over the years

6/ Appleton Area School District (18203) 11/80.

7/ Ibid, footnote 2, (9949) 11/70.

prior to the November, 1971 enacted MERA, 8/ unless we are confronted with a presumptively appropriate petitioned unit of "all blue collar employees, all clerical, or all professionals" employed by a given municipal employer.

The Commission is convinced from the record evidence in this case that the indices establishing a community of interest between the Water Utility employees and those of the general unit and the indices pointing to stability of the general unit outweigh those evidentiary factors, which point to uniqueness and to the goal of avoiding the subversion of the interests of the specialty group in the embrace of the overall group.

The record clearly indicates that the City, through its Common Council and commissioned administrative and labor relations divisions, controls the personnel and labor relations matters of employees of the Water Utility. Contrary to the Association's contention, a substantial number of job-titled positions in the Water Utility are similar in skills and duties of positions in agencies throughout the general unit.

It is mere sophistry to suggest that the City's Personnel Analyst, a specialist in evaluating jobs and defining the duty skills of same throughout the City agencies, must know precisely the job content of each departmental position before such positions can be ranked or compared on the same lateral grade.

The Commission gives weight to his testimony and to the City's exhibits (#20 through 39) and finds substantial commonality between the Water Utility positions and those covered by the general unit.

The evidence further indicates, save for the distinctions in wage rates for various skills, that there exists a similarity of wages, hours and working conditions of the employees in the Water Utility vis-a-vis those of the general unit. The bargaining history reflects that the Local 60 bargaining teams represented the parochial interests of the various agencies, through joint committees in dealing with City negotiators, with no concrete evidence that the special interests of the Water Utility employees have been subverted in that process. The Association's argument that the interests of the Utility group cannot be served by general unit bargaining is substantially discredited by the evidence of permanent job transfers and promotions which have flowed between the groups, where the parity of skills of the transferees have been recognized by the party-signators to the labor agreement.

Finally, the Association's reliance upon the peculiar public enterprise nature of the Water Utility and the special regulation by the PSC is overcome by evidence that the City owns the Utility's realty and fixtures, approves its rate increase requests, approves its operating and capital budgets, and controls the level of manning and the financing of expansion of facilities.

The Commission concludes that, on balance, the facts preponderate in favor of the application of MERA's policy of anti-fragmentation 9/, given the indices of commonality, bargaining history, City-wide personnel administration and City control of finance and assets. We therefore conclude that a unit consisting of all full-time and part-time employees of the Water Utility is inappropriate and contrary to the principle of anti-fragmentation contained in Section 111.70(4)(d)2.a., MERA. The petition therefore has been dismissed.

Dated at Madison, Wisconsin this 10th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli /s/
Gary L. Covelli, Chairman

Morris Slavney /s/
Morris Slavney, Commissioner

Herman Torosian /s/
Herman Torosian, Commissioner

8/ Prior to the adoption of MERA, employees in separate departments were, where requested, required to determine for themselves whether they desired to constitute a separate unit.

9/ See City of Evansville (16671) 11/78; Columbus School District (17259) 9/79; City of Wisconsin Dells (14041) 10/75.