

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

ASSOCIATION OF LAW ENFORCEMENT
ALLIED SERVICES PERSONNEL

Involving Certain Employees of

CITY OF MILWAUKEE (POLICE
DEPARTMENT)

Case CCXVI
No. 27406 ME-1962
Decision No. 19749

Appearances:

Murray & Moake, S.C., Attorneys at Law, by Kenneth J. Murray, 411 East Mason Street, Milwaukee, Wisconsin 53202, appearing on behalf of Association of Law Enforcement Allied Services Personnel.

Nicholas M. Sigel, Principal Assistant City Attorney, City of Milwaukee,
Office of City Attorney, 800 City Hall, Milwaukee, Wisconsin 53202,
appearing on behalf of City of Milwaukee.

Podell, Ugent & Cross, Attorneys at Law, by Alvin R. Ugent, Suite 315,
207 East Michigan Street, Milwaukee, Wisconsin 53202, appearing on
behalf of District Council 48, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTIONS

Association of Law Enforcement Allied Services Personnel having, on January 23, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the Police Department of the City of Milwaukee to determine whether said employees desire to be represented by said Petitioner for the purpose of collective bargaining; and hearing in the matter having been scheduled for February 23, 1981 and subsequently postponed on three different occasions and hearing in the matter having ultimately been conducted on November 5, 1981 at Milwaukee, Wisconsin before Douglas V. Knudson, a member of the Commission's staff, during the course of which District Council 48, AFSCME, AFL-CIO, was permitted to intervene in the matter on the basis of its claim of an interest in the matter; and the City having filed a brief on April 29, 1982, while the Association and District Council 48 chose to not file briefs; and the Commission having considered the entire record and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Association of Law Enforcement Allied Services Personnel, hereinafter referred to as the Association, is a labor organization and maintains its offices at 411 East Mason Street, Room 218, Milwaukee, Wisconsin 53202.

2. That the City of Milwaukee, hereinafter referred to as the City, is a municipal employer and maintains its principal offices at 800 City Hall, Milwaukee, Wisconsin 53202; and that among its governmental functions the City maintains and operates a Police Department wherein it employs both sworn law enforcement personnel and individuals who do not possess the power of arrest.

3. That District Council 48, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization, composed of various affiliated Locals, which represents employees for the purpose of collective bargaining; and that AFSCME maintains its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin, 53208.

4. That the Association initiated the instant proceeding by filing a petition requesting the Wisconsin Employment Relations Commission to conduct an election among otherwise eligible civilian employees in the employ of the Police

Department of the City; that AFSCME intervened in the matter on its claim that it represents some of the employees in said department, and desires to represent the remaining civilian employees; that the classifications of said civilian employees, and the number of positions in each classification are as follows:

Account Clerk I - 1	Clerk Steno III - 8
Building Maintenance Superintendent I - 1	Clerk Steno IV - 1
Building Maintenance Superintendent II - 1	Clerk Typist I - 41
Building Maintenance Supervisor IV - 1	Clerk Typist II - 100
Clerk III - 1	Clerk Typist III - 2
Clerk IV - 2	Computer Operator II - 2
Clerk Steno I - 3	Custodial Worker II - 33
Clerk Steno II - 12	Law Steno III - 0
Duplicating Equipment Operator II - 1	Maintenance Mechanic - 4
Duplicating Equipment Operator III - 1	Management Accountant II - 1
Garage Attendant - 2	Parking Checker - 9
Heating & Ventilation Mech. II - 1	Police Aide - 54
Key Entry Operator I - Full - 1	Physician - 5
Key Entry Operator II - 5	Stores Clerk II - 2

5. That the Association and AFSCME agree that the following could constitute an appropriate collective bargaining unit:

All employees of the Police Department of the City of Milwaukee, excluding employees having the power of arrest, professional, craft, confidential, managerial and supervisory employees, and employees employed in the Buildings and Grounds Division of the Police Department.

6. That the City contends that the above described unit is not an appropriate unit since (1) it includes Police Aides, who do not share a community of interest with the remaining employees included in said desired unit, and (2) in order to avoid the fragmentation of bargaining units, the remaining otherwise eligible employees included therein should be accreted to existing units which include similar or identical employee classifications.

7. That employees occupying the classifications of Custodial Worker II, Garage Attendant, Heating & Ventilating Mechanic II, and Maintenance Mechanic are presently included in an existing collective bargaining unit represented by AFSCME; that the City contends that the occupants of the classifications of Building Maintenance Superintendent I and II, Building Maintenance Supervisor, Clerk Steno IV, Law Steno III, and Management Accountant II are either managerial and/or supervisory employees, and that the Physicians are professional employees; and that neither the Association nor the AFSCME, during the course of the hearing, agreed with or disputed said contention, and it was agreed that should the occupants of said classifications presented themselves to vote, their ballots would be subject to challenge unless the parties resolved such issues prior to the balloting.

8. That at all times material herein AFSCME has been and is the exclusive collective bargaining representative of otherwise eligible employees of the City in some twelve separately established collective bargaining units, the majority of which were established as "departmental" units, and that said separate units consist of employees employed in the following separate departments of the City:

Building Inspection & Safety Engineering
City Development
Data Services, Central Electronic
Election Commission
Harbor Commission
Health
Library-Board of Trustees
Purchases, Central Board of
Tax
Department of Public Works (except for Bureau of Sanitation) 1/

1/ AFSCME also represents a separate unit of employees in the Service Division of the Bureau of Municipal Equipment, also in the Department of Public Works.

9. That at all times material herein otherwise eligible employees employed in thirteen other departments of the City have been and remain unrepresented for the purpose of collective bargaining, and in two of said departments (Treasurer and Comptroller), in elections previously conducted by the Wisconsin Employment Relations Commission, employees therein, including four classifications (Account Clerk, Clerk, Clerk Steno and Clerk Typist) identical to classifications in the department involved herein, rejected AFSCME as their bargaining representative; and that the following tabulation reflects identical classifications of employees and the number thereof employed in departmental units represented by AFSCME, by Local No. 61; Laborers International Union, AFL-CIO in a unit consisting of employees in the Bureau of Sanitation in the Department of Public Works, or in departments wherein the otherwise eligible employees are unrepresented:

<u>Classification</u>	<u>Represented By AFSCME Employees - Units</u>		<u>Represented By Laborers Employees - Units</u>		<u>Not Represented Employees - Depts.</u>	
Account Clerk	41	7			24	9
Clerk	48	6	3	1	30	8
Clerk Steno	94	7	2	1	66	13
Clerk Typist	204	9	1	1	186	11
Computer Operator	13	2			2	1
Duplicating Equip. Operator	20	2			2	1
Garage Attendant	27	1			2	1
Key Entry Operator	4	1			6	1
Law Steno					13	1
Management Acct. (Excluded from units)						
Stores Clerk	12	4			2	1

10. That the classifications of Parking Checker and Police Aides, occupied by ten and fifty-two employees respectively, are unique to the Police Department; that, although the duties of the positions in the Police Department are established by the Chief, the department utilizes the Classification Division of the City Service Commission to classify non-management positions occupied by civilian employees, and the Examination Division of same to test applicants for promotional purposes; that vacancies are filled by eligible candidates who are selected from hiring lists furnished by the City Service Commission or by employee transfers referred by same from other city departments where said employees have occupied a position with the same or similar classification as that of the vacancy; that applicants applying for vacancies in the Police Department are subject to an extensive background investigation in order to determine their suitability for performing their duties; that unlike other city departments, which must fill a vacancy with one of the top three interested eligible applicants from the list provided by the City Service Commission, the Police Department does not follow said procedure, but rather, selects the top eligible interested applicant on the list provided by the City Service Commission; that all appointments are made by the Police Chief, and are subject to review and control by the Fire and Police Commission; that immediate supervision of Police Department employees is provided therein, and such employees are responsible to the Fire and Police Commission; and that, unlike other City employees who are disciplined or discharged and have administrative appeal rights to the department head and/or the Civil Service Commission, civilian employees employed in the Police Department have no such right of appeal.

11. That Police Aides are part of a program which was initiated in 1952 for the purpose of training high school graduates between the ages of 17-19 to become permanent full-time Police Officers; that Police Aides attend school classes at Milwaukee Area Technical College for 4 hours a day, 20 hours a week, and receive on-the-job training for the balance of an 8-hour day and a 40 hour week; that they wear a uniform and badge, and work with Police Officers in non-patrol functions; that Police Aides have no power of arrest and do not accompany Police Officers on patrol; that Police Aides must complete 28 college credits, and be sufficiently familiar with the operation and functions of police work prior to being promoted to the Police Officer classification; that Police Aides, prior to promotion, are probationary employees, which status they may hold for no less than one year, but no more than four; that, while in a probationary status, Police Aides, who are disciplined or discharged, presently have no right of appeal; that in light of the foregoing, Police Aides have a community of interest separate and distinct from other City employees, including the remaining employees in the Police Department who do not possess the power of arrest.

12. That in light of the factors set forth in Finding of Fact 10 all other presently unrepresented civilian employees in the Police Department excluding those who are professional, managerial, supervisory or confidential have a community of interest separate and distinct from employees of the City employed in other departments, in identical classifications, as well as in other non-craft, and non-professional classifications, whether presently represented or unrepresented for the purposes of collective bargaining; and further that bargaining units of City employees have in the past been established on departmental basis, regardless of the non-professional and non-craft classification therein.

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

CONCLUSIONS OF LAW

1. That the following described collective bargaining units, consisting of certain employees of the City of Milwaukee, employed in its Police Department, constitute separate and appropriate collective bargaining units within the meaning of Sec. 111.70(e) and Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act:

- a. All Police Aides employed in the Police Department of the City of Milwaukee, excluding all other employees, managerial, supervisory and confidential employees.
- b. All regular full-time and regular part-time employees employed in the Police Department of the City of Milwaukee, excluding law enforcement personnel having the power of arrest, Police Aides, Garage Attendants, Heating & Ventilating Mechanics, Maintenance Mechanics, Custodial Workers, professional, craft, confidential, managerial and supervisory employees.

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

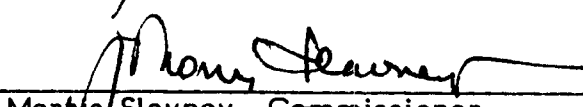
IT IS HEREBY DIRECTED that elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission, within 45 days from the date hereof among employees of the City of Milwaukee employed in its Police Department, who are included in each of the separate appropriate collective bargaining units set forth in the Conclusions of Law, and who were employed on July 15, 1982, except such employees as may prior to the elections quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting in said units desire to be represented by the Association of Law Enforcement Allied Services Personnel, or by District Council 48, AFSCME, AFL-CIO, or by no organization, for the purposes of collective bargaining with the City of Milwaukee on wages, hours and conditions of employment.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

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

The primary issue herein is whether the employees covered by the petition constitute an appropriate unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act which states in relevant part 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." (Emphasis supplied)

The unrepresented employees 2/ involved in this proceeding have never previously sought representation, and thus have no history of collective bargaining, unlike employees in existing units presently represented by AFSCME, who have classifications identical to those at issue herein. As indicated in the Findings of Fact, AFSCME represents employees in various units, which units were established, for the most part, on a departmental basis, at such time when the municipal collective bargaining law granted employees therein the opportunity to establish such units in elections for that purpose. The adoption of the Municipal Employment Relations Act resulted in eliminating the "right" of self-determination of bargaining units by employees in a single department or division. Under MERA, the Commission may establish such departmental or divisional units, either with or without an election to determine the desires of the employees involved as to such unit or units. In two cases initiated after the adoption of MERA, the Commission conducted elections among employees in two separate bargaining units of employees in the Central Board of Purchases, and in the Service Division of the Bureau of Municipal Equipment, wherein the employees in two said units selected AFSCME as their bargaining representative.

Since AFSCME represents employees in more than one unit of City employees - a dilemma certainly arises with respect to any accretion - and that is - to what unit should the instant employees be accreted? Of course, under all foregoing circumstances and the distinct community of interest enjoyed by the employees in question, the proper result is not to accrete either of the units established herein to any existing collective bargaining unit. Should the employees in either or both of the units found appropriate herein select AFSCME as their collective bargaining representative, there is nothing to prevent AFSCME and the City, as they have done in the past, from engaging in multi-unit collective bargaining, which would include the instant units.

Since Police Aides have unique interests and aspirations separate and apart from the other non-represented employees of the department, we conclude that they constitute a separate and distinct collective bargaining unit, and as the remaining unrepresented employees also have a distinct community of interest, they

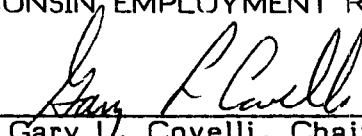
2/ The record does not disclose the manner in which the represented classifications in the Police Department came to be represented by AFSCME. The Commission's records disclose no such formal action by the Commission.


also constitute an appropriate unit. Therefore, we have directed separate elections among the otherwise eligible employees in said two units to determine their desires as to representation for the purpose of collective bargaining.

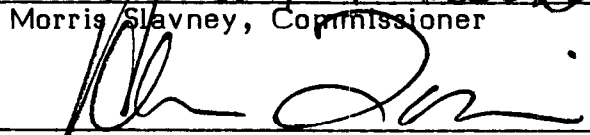
Dated at Madison, Wisconsin this 15th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner