

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
GREEN BAY POLICE SUPPORT
EMPLOYEES UNION
Involving Certain Employees of
CITY OF GREEN BAY (CITY HALL)

Case CXXVI
No. 31955 ME-2251
Decision No. 21210-A

Appearances:

- Mr. Thomas J. Parins, Parins, McKay, Mohr & Beinlich, S.C., Attorneys at Law, 415 South Washington Street, P. O. Box 1098, Green Bay, Wisconsin 54305, appearing on behalf of the Green Bay Police Support Employees Union.
- Mr. Richard V. Graylow, Lawton & Cates, Attorneys at Law, 110 East Main Street, Madison, Wisconsin 53703-3354, and Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2785 Whippoorwill Drive, Green Bay, Wisconsin 54304, appearing on behalf of Green Bay City Hall Employees Union and City of Green Bay Park Police Employees Union, Local 1672-A, AFSCME, AFL-CIO.
- Mr. Donald A. VanderKelen, Labor Relations Consultant, 1450 Kellogg Street, Green Bay, Wisconsin 54303, and Mr. Mark A. Warpinski, Assistant City Attorney, Law Department, Room 300, City Hall, Green Bay, Wisconsin 54301, appearing on behalf of the City of Green Bay (City Hall).

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING PETITION FOR ELECTION

Green Bay Police Support Employees Union (PSEU), having filed a petition for election on July 14, 1983, and an amended petition for election on August 12, 1983, in which the PSEU requested the Wisconsin Employment Relations Commission (the Commission) to conduct an election among certain employees of the City of Green Bay to determine whether those employees wish to be represented by the PSEU for the purposes of collective bargaining; and hearing in the matter having been held on September 7, 1983, before Richard B. McLaughlin, an Examiner on the Commission's staff; and the City of Green Bay City Hall Employees Union and the City of Green Bay Park Police Employees Union, Local 1672-A, AFSCME, AFL-CIO (AFSCME), having been permitted to intervene in the matter; and a stenographic transcript of the hearing having been prepared and having been delivered to the Commission on October 20, 1983; and the parties having filed briefs in the matter by September 23, 1983, in which AFSCME and PSEU addressed the issues of whether or not the petitioned-for bargaining unit was an appropriate bargaining unit, and whether or not the election petition and amended petition filed by the PSEU had been timely filed; and the Commission having, on November 23, 1983, issued a decision 1/ in which the Commission dismissed the election petition filed by the PSEU on the basis that it had not been timely filed; and the PSEU having, on December 22, 1983, filed a petition for review of Commission Decision No. 21210 with the Circuit Court for Brown County; and AFSCME having, on January 13, 1984, filed a request for a declaratory ruling with the Commission in which AFSCME requested the Commission to determine that the City had an obligation to bargain with AFSCME without regard to the pendency of the aforementioned petition for review filed by the PSEU; and the parties having recognized that the litigation attendant to the aforementioned declaratory ruling and petition for review was disruptive of the employment relations between the City and its employees affected by that litigation and having reached a settlement agreement which included, in relevant part, a request that the Commission reopen Case CXXVI, ME-2251 and proceed with issuing a decision on the issues presented that have been heard and argued in said case; and the Commission having determined that said reopening would be in the best interests of all parties concerned; and the Commission having

1/ City of Green Bay (City Hall), 21210 (11/83).

reopened said case, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Green Bay Police Support Employees Union, hereinafter referred to as the PSEU, is a labor organization which has its offices located in c/o 415 South Washington Street, P. O. Box 1098, Green Bay, Wisconsin 54305.

2. That City of Green Bay City Hall Employees Union Local 1672-A, AFSCME, AFL-CIO, and City of Green Bay Park Police Employees Union Local 1672-A, AFSCME, AFL-CIO, hereinafter collectively referred to as AFSCME, are labor organizations which have their offices located in c/o 2785 Whippoorwill Drive, Green Bay, Wisconsin 54304.

3. That the City of Green Bay, hereinafter referred to as the City, is a municipal employer which has its offices located at the City Hall, 100 North Jefferson Street, Green Bay, Wisconsin 54301, and which, among its functions, maintains certain City Parks and operates a City Hall and a City Hall Annex, hereinafter referred to as the Annex, which includes a municipal court.

4. That the City and AFSCME are parties to a collective bargaining agreement which covers certain employees employed by the City at its City Hall and at its Annex, which is in effect from January 1, 1983, until December 31, 1983, and which contains, among its provisions, the following:

ARTICLE I

RECOGNITION AND UNITS OF REPRESENTATION

The Employer recognizes the Union as the exclusive representative for the purposes of conferences and negotiations with the Employer, or its lawfully authorized representatives, on questions of wages, hours, and conditions of employment for the Unit of Representation consisting of all employees of the City of Green Bay employed as follows:

A. "All employees of the City of Green Bay employed in the City Hall and associated departments, but excluding registered nurses, caseworkers, engineers, sanitarians, curators, department heads, elected and appointed officials, supervisors, confidential employees and all other employees of the Municipal Employer."

B. "All caseworkers employed by the City of Green Bay in its Department of Welfare, excluding department head, supervisors and all other employees of the Municipal Employer."

. . .

that approximately 109 employees compose the bargaining unit described in Article I above; that the City and AFSCME are parties to a collective bargaining agreement which covers certain Park Police employees, which is in effect from January 1, 1983, until December 31, 1983, and which contains, among its provisions, the following:

ARTICLE I

RECOGNITION OF UNITS OF REPRESENTATION

The Employer recognizes the Union as the exclusive representative for the purposes of conferences and negotiations with the Employer, or its lawfully authorized representatives, on questions of wages, hours, and conditions of employment for the Unit of Representation consisting of all employees of the City of Green Bay employed as follows:

A. "All employees of the City of Green Bay Park Police, excluding supervisors and all other employees of the City of Green Bay."

and that three regular full-time employees compose said Park Police bargaining unit.

5. That the instant proceeding concerns a petition for election filed by the PSEU, and more specifically whether the bargaining unit for which the PSEU seeks an election is an appropriate bargaining unit; that the desired unit is described thus: All regular full-time and regular part-time civilian police and municipal court employees employed by the City of Green Bay at the City Hall Annex located at 301 South Adams Street, Green Bay, Wisconsin, excluding only supervisory, confidential, managerial, or executive civilian employees and all sworn police officers and a municipal judge; that this bargaining unit covers thirty employees within the following classifications: Park Police (3), Telecommunication Clerk (9), Head Mechanic (1), Mechanic (2), Car Washer (1), Building Services Supervisor (1), Building Custodian II (1), Administrative Clerk (1), Clerk Steno III (4), Clerk Steno II (1), Clerk II (3), Clerk Typist II (1), Secretarial Steno (1), and Microfilm Operator (1); that each of these classifications of employees is presently covered by one of the bargaining unit descriptions set forth in Finding of Fact 4, above; and that AFSCME is presently the exclusive collective bargaining representative for the employees within the aforementioned classifications.

6. That none of the employees in the petitioned-for bargaining unit have the power of arrest; that the City's three Park Police officers are responsible for patrolling all of the City's Parks and for providing relief assistance as necessary to the City's Humane Officer; that the Park Police are responsible for patrolling the City's Parks and for reporting any illegal behavior they observe to City police officers for further action which may include arrest; that the Park Police do not have the power of arrest but do report their observations to police officers and do recommend the action the Park Police officer believes appropriate; that the Park Police officers prepare reports of such incidents and make court appearances if necessary; that the Park Police maintain radio contact as necessary throughout their work shift with the Telecommunication Clerks; that the Telecommunication Clerks are responsible for operating the City's police switchboard; that this responsibility includes taking incoming calls from citizens and from police officers, operating the City's teletype, as well as seeking, obtaining and reporting information from Police Department records to the City's police officers as needed; that there are no employees outside of the Annex but within the present AFSCME City Hall and Park Police bargaining units who perform duties comparable to the Telecommunication Clerks or Park Police; that the Mechanics at the City's Annex are responsible for taking reports from police officers and for attending to any vehicular maintenance required by those reports, as well as for performing basic maintenance and repair of Police Department vehicles; that each of these Mechanics is also responsible for providing basic service and repair to police equipment carried in police vehicles including fire extinguishers, first aid kits, radios, lights, shotguns, etc.; that these employees may perform service and maintenance duties on other City vehicles but do so on an infrequent basis; that the City's Car Washer is responsible for washing police vehicles; that there are no Mechanics in the present City Hall and Park Police bargaining units besides those employed by the City in its Annex; that the Building Services Supervisor and the Building Custodian II perform a variety of duties incident to overseeing the operation and maintenance of the City's Annex; that there are several classifications of employees in the present City Hall bargaining unit who are responsible for custodial and maintenance related duties similar to those of the Building Services Supervisor and the Building Custodian II and who perform similar duties and possess similar skills and qualifications to the Building Services Supervisor and the Building Custodian II; that the employees occupying the remaining classifications within the petitioned-for bargaining unit perform duties which are clerical in nature; that the Administrative Secretary is responsible for process-

gaining units who share a similar level of skill, perform similar work duties, and share similar job qualifications to those of the Annex employees occupying the classifications of Administrative Clerk, Clerk Steno III, Clerk Steno II, Clerk II, Clerk Typist II and Secretarial Steno.

7. That the collective bargaining agreements covering Park Police and City Hall employees and mentioned in Finding of Fact 4, above, each contain an Appendix A which provides wage rates for various classifications of employees; that among those wage rates are the following:

APPENDIX A
PARK POLICE MONTHLY SALARY SCHEDULE

1/1/83

| | <u>Proba- tionary</u> | <u>Job Rate</u> |
|-------------|---------------------------|---------------------|
| Park Police | \$1104 | \$1162 |

APPENDIX A
LOCAL 1672-A SALARY SCHEDULE

1/1/83

| <u>CLASSIFICATION</u> | <u>Probationary</u> | <u>Job Rate</u> |
|-------------------------------|---------------------|-----------------|
| Account Clerk | 1138 | 1198 |
| Administrative Clerk | 1234 | 1299 |
| | | |
| Building Custodian I | 1166 | 1227 |
| Building Custodian II | 1262 | 1328 |
| Building Maintenance Worker | 1335 | 1405 |
| Building Services Supervisor | 1442 | 1518 |
| Building & Grounds Supervisor | 1378 | 1450 |
| | | |
| Car Washer | 942 | 992 |
| | | |
| Clerk I | 960 | 1010 |
| Clerk II | 1006 | 1059 |
| Clerk-Steno I | 987 | 1039 |
| Clerk-Steno II | 1052 | 1107 |
| Clerk-Steno III | 1140 | 1200 |
| Clerk-Typist I | 960 | 1010 |
| Clerk-Typist II | 1006 | 1059 |
| Clerk-Typist III | 1073 | 1129 |
| | | |
| Head Mechanic | 1652 | 1739 |
| | | |

| | | |
|-------------------------|------|------|
| Mechanic | 1572 | 1655 |
| Microfilm Operator | 1006 | 1059 |
| . . . | | |
| Secretarial-Steno | 1299 | 1367 |
| . . . | | |
| Telecommunication Clerk | 1078 | 1135 |
| . . . | | |

that the Park Police work from 4:00 p.m. until 12:00 a.m. unless they are called upon to fill in for the City's Humane Officer; that the Park Police work a schedule of hours consisting of five duty days with two days off, followed by five duty days with three days off on a repeated cycle; that the Telecommunication Clerks work three shifts which run from 6:00 a.m. until 2:00 p.m., from 2:00 p.m. until 10:00 p.m. and from 10:00 p.m. until 6:00 a.m.; that the Telecommunication Clerks work a schedule which consists of five duty days with two days off followed by five duty days with three days off on a repeating cycle; that the "five/two; five/three" work schedule of the Park Police and Telecommunication Clerks is the same as that worked by the City's police officers, and is designed to assure the City of a full seven day per week operation; that the Mechanics' hours of work vary with seniority with the most senior Mechanic working from 7:00 a.m. until 3:00 p.m. on Monday through Friday and with the next senior Mechanic working from 9:00 a.m. until 5:00 p.m. on Tuesday through Saturday, with the least senior Mechanic working from 4:30 p.m. until 12:30 a.m. on Monday through Friday; that the Car Washer works from 8:00 a.m. until 4:00 p.m. on Monday through Friday; that the collective bargaining agreement covering City Hall employees and mentioned in Finding of Fact 4 above provides a work schedule for custodial employees as follows:

ARTICLE XI

WORK SCHEDULE - OVERTIME PAY - CALL-IN PAY

. . . City Hall custodians and employees who work at the City garage shall work forty (40) hours per week, Monday through Friday, eight (8) hours per day.

Custodial, Mechanics and Telecommunication Clerk Employees, City Hall Annex: Work performed in the annex is based on a seven (7) day per week operation except for Telecommunication Clerks. Employees shall work five (5) consecutive eight (8) hour days for a total of a forty (40) hour week.

. . .

that the Annex employees occupying the clerical classifications work a schedule of hours extending from 8:00 a.m. until 4:00 p.m. on Monday through Friday; that non-Annex employees occupying clerical positions do not necessarily work this schedule of hours; that, for example, the City Hall employees occupying the classification of Clerk II work from 8:00 a.m. to 4:30 p.m. on Monday through Friday; that other non-Annex City Hall employees do not necessarily work an identical schedule of hours; that, for example, some non-Annex City Hall employees work a normal schedule of hours consisting of seven and one-half (7 1/2) hours per day, while other such employees work a normal schedule of hours which consists of an eight (8) hour day; that each of the collective bargaining agreements mentioned in Finding of Fact 4 above provides various benefits for the City Hall and Park Police covered by those agreements including, for example, provisions regarding paid and unpaid leave, as well as provisions providing for life insurance and group health and dental insurance; and that the collective bargaining agreement covering City Hall employees does distinguish between Annex and non-Annex employees in several respects including the provisions of Article XI which tie the payment of an overtime premium to an employee's normal schedule of hours, as well as the provisions of Articles XII and XX which respectively provide as follows:

ARTICLE XII
PAID HOLIDAYS

. . .

For those employees in the classification of Telecommunication Clerk at the City Hall Annex, holidays shall be observed on the day on which they actually occur. For the classifications of Mechanic and Custodian at the City Hall Annex, when one of the holidays listed falls on the 6th day of the employee's work week, the previous day will be observed as the holiday with pay. When one of the holidays listed falls on the 7th day of the employee's scheduled work week, the following day will be observed as the holiday with pay.

. . .

ARTICLE XX
CLOTHING ALLOWANCE

. . . Mechanics in the Police Department shall receive a seventy five dollar (\$75.00) per year clothing allowance. Telecommunication Clerks in the Police Department shall receive a one hundred and thirty dollar (\$130.00) per year clothing allowance . . .

8. That the City is structured to operate on a departmental basis subject to the ultimate control of the Mayor and the Common Council; that work is assigned within a department, job descriptions are maintained on a departmental basis and discipline is meted out within a department subject to a limited review by the City's centralized Personnel Department; that the collective bargaining agreements mentioned in Finding of Fact 4 above covering City Park Police and City Hall employees, each provide for a grievance procedure consisting of four steps; that in each collective bargaining agreement, Step 1 involves a meeting between a Steward and a grievant's immediate supervisor, with Step 2 involving a submission of the written grievance to the department head and a meeting between the Grievance Committee and the department head, with Step 3 involving a submission of the written grievance to the City's Personnel Committee or its representative, and a meeting between said City representatives and the Grievance Committee, and with Step 4 involving a submission of the grievance to arbitration; that once a formal grievance has been filed, discipline which has been meted out by a department head is subject to amendment within the discretion of the City's Labor Negotiator in accordance with the provisions of the grievance procedure; that the City hires new employees through a centralized personnel office which recruits, screens and certifies a list of eligible applicants which is ultimately submitted to a department head who exercises the power of selecting the individual to be hired; that the filling of certain vacancies within the City Hall is governed by certain job posting procedures set forth in Article VIII of the collective bargaining agreement covering City Hall employees mentioned in Finding of Fact 4; that the Park Police operate under the immediate supervision of a Police Captain or Police Department Shift Commander; that the Telecommunication Clerks operate under the immediate supervision of a Police Sergeant if one is present in the radio room, and otherwise under the immediate supervision of a Police Department Shift Commander; that the Mechanics operate under the immediate oversight of the most senior Mechanic, and of the Captain of the Traffic Department; that the Annex employees occupying the clerical classifications are subject to the immediate supervisory chain of command within the Police Department and within the municipal court; that the remaining employees of the overall City Hall bargaining unit are subject to the immediate supervisory chain of command existing within an individual employee's department; and that at present the employees within the overall City Hall bargaining unit work in a number of different departments within the City's organizational structure.

9. That the Annex was constructed in late 1969 and is located three blocks from the City Hall; that the Park Police spend about 90% of their time patrolling City Parks and about 10% of their time in the City Hall Annex; that the Telecommunication Clerks perform their duties primarily in the radio room of the City's Police Department which is located in the Annex; that the Mechanics, except when performing repairs on-site, work in the City garage which is located in the

rear of the Annex; that the employees occupying the clerical classifications within the Annex perform their duties either at the Police Department or at the municipal court which are both housed in the Annex; that the non-Annex employees within the overall City Hall bargaining unit do not share a common worksite although many of these employees work at City Hall; and that, for example, among these non-Annex City Hall employees, certain individuals work at a City Hall garage which is located 2.2 miles from the City Hall with certain other individuals working at Mason Manor which is located 3 miles from the City Hall.

10. That Annex employees have infrequent social or work related contact on a day-to-day basis with non-Annex employees within the overall City Hall bargaining unit; that since the Annex was constructed in late 1969, several employees employed in classifications within the overall City Hall bargaining unit have transferred into positions located within the Annex; and that those transfers included the following: Barbara Dennis transferred from the Insurance Department within the City Hall where she was employed as a Typist II into her present position of Telecommunication Clerk within the Annex; Gayle Filo transferred from the City Hall Health Department into her present position within the Annex as a Telecommunication Clerk; Karen Sopata transferred from the City Hall Park Department into her present position as a Clerk Steno III in the Annex; and Sharon Schmit transferred from the Inspection Department within the City Hall into her present position of Telecommunication Clerk.

11. That the City Hall bargaining unit presently represented by AFSCME was originally certified by the Commission in 1968 2/; that some time after this certification the City constructed and opened the Annex; that at the time of the original certification of the City Hall bargaining unit in March, 1968, none of the classifications of Annex employees set forth in Finding of Fact 5 existed, and the City's municipal court consisted of one clerical employee who was unrepresented by a labor organization and one Police Sergeant; that as of March, 1968, the City primarily employed sworn police officers to perform duties incident to police vehicle maintenance and to the maintenance of Police Department records; that during a period of time roughly paralleling the construction of the Annex, the City decided to place civilian employees without the power of arrest in various maintenance, clerical, and dispatching positions to free police officers with the power of arrest for work in the field; that the classifications set forth in Finding of Fact 5 are presently staffed by civilian employees and reflect this policy decision by the City which has been gradually effected between 1968 and the present; that in early 1978 AFSCME filed a unit clarification petition with the Commission seeking to establish that clerical workers and Mechanics in the City's Annex should properly be placed in the overall City Hall bargaining unit which AFSCME represented; that this unit clarification petition was ultimately resolved by a stipulation entered into between the City and AFSCME by which these clerical workers and mechanics were placed within the overall City Hall bargaining unit represented by AFSCME and certified by the Commission in 1968 3/; that this stipulation ultimately resulted in the inclusion of the classifications set forth in Finding of Fact 5 in the present City Hall bargaining unit; that AFSCME was certified by the Commission as the exclusive collective bargaining representative of the Park Police in 1980; that this certification resulted from an election conducted by the Commission on the joint request of the City and AFSCME 4/; that at least since the placement of Annex employees within the overall City bargaining unit in 1978, AFSCME has functioned as the exclusive collective bargaining representative of the classifications of Annex employees set forth in Finding of Fact 5 above as those classifications have been created; that such representation has involved the negotiation of several collective bargaining agreements; that such representation has also included the processing of various grievances initiated under the provisions of the grievance procedure contained in each collective bargaining agreement; that AFSCME has, for example, processed at least three grievances regarding Annex employees through the grievance procedure including arbitration; that one of these grievances concerned whether or not a police officer had performed work which should have been performed by the Head Mechanic mentioned in Finding of Fact 5 above; that AFSCME has negotiated benefits unique

2/ City of Green Bay, 8390 (3/68).

3/ City of Green Bay, 8390-A (6/78).

4/ City of Green Bay, 17904 (7/80).

to Annex employees; that, for example, employees occupying the classification presently known as Telecommunication Clerk approached AFSCME some years ago and requested that AFSCME attempt to bargain with the City in order to remove any reference to switchboard operation from their job title and to secure for them a substantial adjustment in their wage rates; that subsequently AFSCME was successful in causing the City to change the job title of the classification occupied by these employees to Telecommunication Clerk, and in securing for these employees a wage adjustment of approximately \$0.50 per hour; and that AFSCME has also, in its capacity as collective bargaining representative for Annex employees, bargained adjustments in the Mechanics wage rates, as well as a night shift differential which has a greater effect on Annex employees than on non-Annex employees in the overall City Hall bargaining unit.

12. That the Annex employees occupying the classifications noted in Finding of Fact 5 above do not share a community of interest so unique as to warrant a separate bargaining unit of Annex employees only; and that a bargaining unit composed exclusively of such Annex employees would result in undue fragmentation of the City's bargaining units.

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

CONCLUSIONS OF LAW

1. That Green Bay Police Support Employees Union is a "Labor organization" within the meaning of Sec. 111.70(1)(j) of the Municipal Employment Relations Act (MERA).

2. That City of Green Bay City Hall Employees Union Local 1672-A, AFSCME, AFL-CIO, and City of Green Bay Park Police Employees Union Local 1672-A, AFSCME, AFL-CIO, are "Labor organizations" within the meaning of Sec. 111.70(1)(j) of MERA.

3. That the City of Green Bay is a "Municipal employer" within the meaning of Sec. 111.70(1)(a) of MERA.

4. That a collective bargaining unit comprised solely of Annex employees occupying the classifications set forth in Finding of Fact 5 above is not an appropriate collective bargaining unit for the purposes of collective bargaining within the meaning of Sec. 111.70(1)(e) and 111.70(4)(d)2.a. of MERA.

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

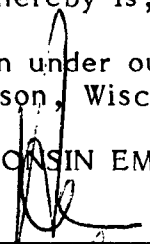
ORDER 5/


That the petition for an election filed by the Green Bay Police Support Employees Union be, and the same hereby is, dismissed.

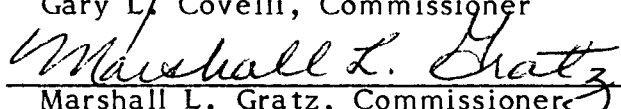
Given under our hands and seal at the City of
Madison, Wisconsin this 15th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

5/ 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, (Continued on page 9)

file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit 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.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING PETITION FOR ELECTION

The Parties' Positions:

The PSEU contends "the claimed appropriate bargaining unit is in fact appropriate, and its recognition as such would not constitute undue fragmentation." According to the PSEU, the petitioned-for bargaining unit is unique "as to its makeup and its derivation." Specifically, the PSEU contends that the bargaining unit is made up of Annex employees who perform duties which are supportive of the City's police and which were, in the past, primarily performed by police officers. After an extensive review of the record in light of the duties performed by the various classifications of employees within the requested bargaining unit, and in light of the Commission's caselaw, the PSEU concludes that all of these employees have a sufficiently unique community of interest to warrant a separate bargaining unit. Regarding the derivation of the existing bargaining unit, the PSEU notes that none of the classifications composing the petitioned-for bargaining unit existed at the time AFSCME was certified as the exclusive bargaining representative for the overall City Hall bargaining unit, but that virtually all of these classifications came about over time as the City effected a decision to place civilian employees in positions once filled by police officers. The PSEU contends that such a derivation has not afforded the Annex employees any voice in the creation of their bargaining unit, and has resulted in a bargaining unit that the Commission would not have created on its own without a separate accretion election. This unique derivation, according to the PSEU, dictates that the Commission grant little, if any, weight to AFSCME's original certification and to the bargaining history developed subsequent to that certification. The PSEU in addition argues that the requested bargaining unit would not cause undue fragmentation. According to the PSEU, the thirty person bargaining unit claimed appropriate is "a well-knit group of sufficient numbers that want to exercise their statutory right to select their own bargaining representative." In addition, the PSEU contends that such a bargaining unit would incorporate the three Park Police, and would "increase the likelihood of the Police Support Employees being able to better coordinate their bargaining efforts with the Police Union and thus be more viable as a Unit."

AFSCME argues that the Commission's task in the present case is not to determine the "most" appropriate bargaining unit, and contends that the Commission's caselaw precludes using community of interest as the sole determinant in an election proceeding such as the instant matter involving the severance of employees from an overall bargaining unit. Because the overall City Hall bargaining unit enjoys a long bargaining history, AFSCME argues that "A presumption of continuing appropriateness must be recognized by the Commission . . . As such, the Support Union must be required to demonstrate the complete 'inappropriateness' of the unit by clear and convincing evidence." According to AFSCME, the PSEU has failed to carry this burden, since no persuasive reason has been established by the PSEU to justify cutting up the existing overall bargaining unit. In light of prior Commission cases, AFSCME urges that the Commission must dismiss the election petition filed by the PSEU.

The City has not taken any position regarding whether or not the petitioned-for bargaining unit is appropriate.

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:

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.
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 unit.

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/

Before applying the above-stated factors to the facts of this case, certain preliminary issues raised by the parties must be addressed.

First, the Commission has not 7/ and does not consider burden of proof concepts to be an appropriate guide to resolving the issues presented by a non-adversarial election petition. The Commission's duty in election cases is to discharge its statutory obligation to determine the question of the appropriate unit for the purposes of collective bargaining. The burden of proof, to the extent one can be said to exist in this case was on each party to bring forth the information it deemed appropriate to guide the Commission in its determination.

Second, AFSCME's assertion that the bargaining history in this case demands the Commission apply a presumption of continuing appropriateness must be rejected. As noted above, bargaining history is one of the seven factors which guide the Commission's analysis of whether or not a petitioned-for bargaining unit is appropriate. To raise that single factor to the level of a presumption would not clarify the Commission's analysis, and would denigrate the role of the remaining six factors.

6/ City of Madison (Water Utility), 19584 (5/82) at 9-10.

7/ Durand Joint School District No. 1, 13552 (4/75).

Finally, although the PSEU has raised a considerable argument regarding whether or not the Commission would have accreted the Annex employees without an accretion election, 8/ the Commission, as noted in a prior case, "has not been in the business of undoing the work of municipal employers and unions through contractual voluntary recognition over the years . . . unless . . . confronted with a presumptively appropriate petitioned unit of 'all blue collar employees, all clerical or all professionals' employed by a given municipal employer." 9/ Thus, whether or not the Commission would have created the City Hall and Park Police bargaining units which presently exist in the absence of the City's and AFSCME's past stipulations is not a consideration relevant to this case. The present case must turn solely on whether or not the petitioned-for bargaining unit is appropriate in light of the seven factors cited above.

The present record regarding whether the employees in the petitioned-for bargaining unit share a community of interest separate from other employees is a mixed one. As the PSEU urges, Annex employees have little day to day work related contact with non-Annex City Hall employees. 10/ The PSEU's contention that the petitioned-for bargaining unit would allow Annex employees to better coordinate their bargaining with police officers is, however, not a persuasive indication of a community of interest unique to Annex employees. It may well be that the police, Annex and Park Police employees possess conflicting interests, as can be seen in the fact that AFSCME has processed a grievance on behalf of the Head Mechanic regarding work allegedly improperly performed by a police officer.

The record regarding the duties and skills of Annex employees as compared to the duties and skills of non-Annex City Hall employees is a mixed one also. The record does establish that the Park Police, Telecommunication Clerks, Mechanics, and to a lesser degree, the Microfilm Operator perform duties without parallel within the overall City Hall bargaining unit. The record also demonstrates, however, that the duties of the custodial, maintenance, and clerical classifications within the Annex do have parallels in the overall non-Annex City Hall bargaining unit. The fact that employees from non-Telecommunication Clerk classifications within the City Hall bargaining unit have transferred into that classification, as well as into clerical classifications within the Annex constitutes persuasive evidence that a "parity of skills of the transferees (has) been recognized by the party-signators (sic) to the labor agreement." 11/

An examination of the wages, hours and working conditions of Annex and Park Police employees as compared to other employees in the overall City Hall bargaining unit also presents a mixed record. The wages of various Annex and non-Annex employees have been set forth in the Findings of Fact, and demonstrate that wage differentials between employee classifications within the Annex exist and tend to reflect differentials which exist within the overall City Hall bargaining unit. The Telecommunication Clerks and the Park Police work a schedule of hours paralleling that of the police, unlike other employees within the overall City Hall bargaining unit. However, the Mechanics, custodians, and clericals within the Annex do not work a schedule of hours which parallels that of the Telecommunication Clerks and the Park Police. Thus, although differences in scheduled hours

8/ Notwithstanding PSEU's citation of Manitowoc County, 18351-A (3/83), the PSEU's argument on this point is not free of doubt. Whether or not the Commission would have accreted any or all of the classifications set forth in Finding of Fact 5 above could well have turned on the classification involved and the time at which the accretion was requested. It can be noted, for example, that the Commission has included employees performing dispatcher/clerical type functions in an overall City Hall bargaining unit even where such employees were located in a facility separate from the City Hall. City of Menasha, 11714-A (6/73).

9/ City of Madison (Water Utility), at 10-11.

10/ A similar point could be made regarding the social contact between Annex and non-Annex City Hall employees, but the Commission does not view employees' off-work relationships as a determinative factor in analyzing the appropriateness of bargaining units.

11/ City of Madison (Water Utility), at 11.

can be noted between Annex and non-Annex City Hall employees, similar differences exist between the various classifications of Annex employees composing the petitioned-for bargaining unit. The working conditions of Annex, Park Police and non-Annex City Hall employees are set forth in the collective bargaining agreements covering those employees and thus reflect that these employees, at present, share similar fringe benefits.

The bargaining unit sought by the PSEU is a departmental bargaining unit, and because the City's chain of supervisory command is set up on a departmental basis, Annex and Park Police employees are subject to a similar chain of immediate supervisory command which is dissimilar in certain respects to that of other City Hall employees who work in different departments. The grievance procedure common to City Hall and Park Police employees does point out, however, that certain personnel procedures relevant to employee supervision are common to Annex, Park Police and to non-Annex City Hall employees, as does the fact that the City's labor negotiator possesses the discretion to adjust discipline meted out by departmental personnel if a formal grievance has been filed. In addition, the City's centralized Personnel Department does possess certain authority which is common to all departments, and the ultimate authority over all of the City's employees resides with the Mayor and the Common Council.

The record does establish that Park Police and Annex employees do generally share a work place separate from that of other City Hall employees. Each of the classifications within the Park Police and the Annex do, however, work in different work sites inside and outside of the Annex. The Park Police, though they spend only about 10% of their time at the Annex, are in contact with the Telecommunication Clerks throughout their work shift. Though many employees within the present City Hall bargaining unit do work at City Hall, it can be noted that not all non-Annex City Hall employees share this common work site.

The evidence submitted regarding bargaining history establishes that AFSCME has negotiated a number of benefits unique to Annex employees, and has pursued grievances brought by Annex employees through arbitration. In addition, the present overall City Hall bargaining unit configuration is based, in large part, on stipulations reached between the City and AFSCME. This configuration has existed throughout the negotiation of several collective bargaining agreements covering Annex and non-Annex employees.

That evidence submitted regarding the possibility of undue fragmentation should Annex employees be severed from the overall City Hall bargaining unit indicates that such undue fragmentation would result. The record does establish that the PSEU seeks to sever thirty employees from an overall bargaining unit of approximately 109 employees, and to do so on a departmental basis. Arguably, such a departmental grouping could lead to the fragmentation of City Hall bargaining units if employees with similar duties and skills (for example clerical and custodial employees) were grouped together solely on the basis of their department. Although the Park Police bargaining unit consists of three employees and would appear to be fragmentary in nature, that bargaining unit resulted from an election conducted on a stipulation between the City and AFSCME. Thus, the small size of that bargaining unit is traceable at least in part to the City's and AFSCME's assessment that the bargaining unit could be workable at least if AFSCME were the representative selected. The PSEU's attempt to label its petitioned-for bargaining unit anti-fragmentary because it includes these Park Police employees is, then, unpersuasive. Even if persuasive, such fragmentation could, arguably, be accommodated by including the Park Police employees in the overall City Hall bargaining unit, a question which is not before the Commission on the present record.

Before stating the conclusions to be drawn from this review of the record, it is important to note that the Commission's duty under MERA in this case is not to determine whether the existing bargaining units of City Hall and Park Police employees or the petitioned-for bargaining unit of Annex employees constitute the "most" appropriate bargaining unit. 12/ Rather, the Commission's function is to determine whether the employees in the petitioned-for Annex bargaining unit possess "interests so unique to overcome the mandate . . . that this Commission shall

12/ City of Clintonville, 19858 (8/82) at 12.

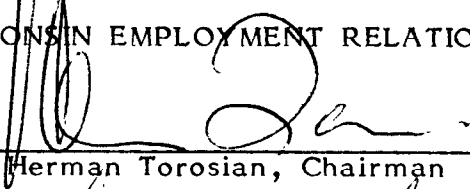
whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force." 13/ The Commission concludes that, on balance, the facts preponderate in favor of the application of MERA's policy of anti-fragmentation. The employees of the petitioned-for bargaining unit do share a commonality of general workplace, and of immediate supervision. However, the record does not establish that these employees share interests and aspirations unique within the petitioned-for bargaining unit which are dissimilar to those of the employees within the overall Park Police and City Hall bargaining units. Duties, skills, wages, and hours vary considerably among the classifications of employees within the petitioned-for bargaining unit. Ultimately, the common link between Annex and Park Police employees is traceable less to the duties, skills, etc., shared by those employees, than to the fact that these employees perform work generally supportive of the police and the fact that a number of these employees do not wish to be part of an overall bargaining unit.


Such considerations, though not irrelevant, cannot be considered determinative in this case for a number of reasons. First, the present record does not pose any issue questioning AFSCME's majority support within the City Hall or Park Police bargaining units. Second, a conclusion that employees performing similar duties and possessing similar skills (for example, maintenance and clerical employees) can be severed from an existing bargaining unit solely on the basis of the content of their work (i.e. police supportive vs. non-police supportive) would inevitably result in the fragmentation of bargaining units. Third, overall bargaining units of City Hall employees which include positions comparable to Telecommunication Clerks have been found appropriate by the Commission in the past. 14/ Finally, the existing overall City Hall bargaining unit involves an established bargaining relationship which has existed over time. As the Commission has noted in a prior case: "Bargaining history is relevant . . . insofar as it relates to a previously established relationship between the parties. In structuring or revising unit descriptions, the Commission is sensitive to the desirability of not disturbing such a relationship without compelling reason." 15/ Such compelling reason simply does not exist in this case, and the election petition filed by the PSEU has, accordingly, been dismissed.

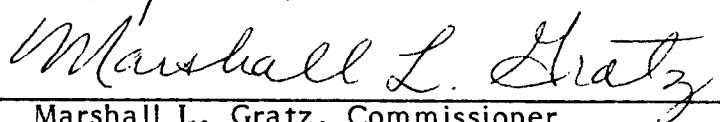
Dated at Madison, Wisconsin this 15th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner