

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

: DRIVERS, SALESMEN, :
: WAREHOUSEMEN, MILK PROCESSORS, :
: CANNERY, DAIRY EMPLOYEES & :
: HELPERS UNION LOCAL NO. 695, :
: affiliated with :
: I.B.T.C.W. & H. OF A. :
: Case CIX
: No. 32500 ME-2303
: Decision No. 21771
: Involving Certain Employes of :
: :
: CITY OF MADISON (METRO BUS) :
: :
: -----

Appearances:

- Mr. Matthew Robbins, Goldberg, Previant, Uelmen, Gratz, Miller and Brueggeman, S.C., Attorneys at Law, 788 North Jefferson, Room 600, P. O. Box 92099, Milwaukee, WI 53202, appearing for the Petitioner.
- Mr. Timothy Jeffery, Director of Labor Relations, City of Madison, City-County Building, 210 Monona Avenue, Madison, WI 53709, appearing for the City.
- Mr. Darold Lowe, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing for the Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

General Drivers and Helpers Union, Local No. 695, International Brotherhood of Teamsters, having filed on November 23, 1983, a petition requesting the Wisconsin Employment Relations Commission to conduct an election in an alleged appropriate bargaining unit of certain employes of the City of Madison at Metro Bus Company and E/H Bus Service; and having subsequently modified its petition to request that the Commission conduct an election whereby said employes could choose to be included in an existing bargaining unit; and a hearing having been held in the matter on January 24, 1984, February 6, 1984 and March 2, 1984 before Examiner Carol L. Rubin, a member of the Commission's staff, during the course of which Local 60, AFSCME, AFL-CIO, was permitted to intervene in the matter; and a stenographic record of the hearing having been made; and the parties having submitted written briefs, the last of which was received on March 30, 1984; and the Commission having considered the record and arguments of the parties, and being fully advised in the premises, hereby makes the following

FINDINGS OF FACT

1. That the City of Madison, hereinafter referred to as the City, is a municipal unit of government providing various municipal services including a mass transit bus system and a bus service for the elderly and handicapped, and has its offices at the City-County Building, 210 Monona Avenue, Madison, Wisconsin 53709.
2. That General Drivers and Helpers Union, Local No. 695, International Brotherhood of Teamsters, hereinafter referred to as Teamsters, is a labor organization representing municipal employes for the purposes of collective bargaining, and has its offices at 1314 North Stoughton Road, Madison, Wisconsin 53714.
3. That Local 60, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization representing municipal employes for the purpose of collective bargaining, and has its offices at 5 Odana Court, Madison, Wisconsin 53719.

4. That in 1970 the City purchased a private bus company and then contracted with ATE Management and Service Company, Inc., hereinafter referred to as ATE, to operate the City's bus service; that the City, through its agents, ATE and the Madison Metro Service Corporation (a Wisconsin corporation and a wholly-owned subsidiary of ATE), hereinafter referred to as Metro, provides mass transit bus service and employs municipal employees to provide said service; that the City continues to have a management contract with ATE to manage and administer the Madison mass transit system through Metro; that Ron Barnes is an ATE employee who functions as General Manager of Metro; that there are approximately 320 employees at Metro; that approximately 270 of said employees are drivers and garage employees currently included in the bargaining unit represented by Teamsters and described in Finding of Fact 6; and that the rest of the employees at Metro are unrepresented.

5. That the City also provides a bus service for the elderly and handicapped through E/H Bus Team, Inc., a Wisconsin corporation, hereinafter referred to as E/H; that said service is a demand-responsive, door-to-door service; that for at least the six years prior to 1984, the City contracted with Mr. Hank Sommers, General Manager of E/H Bus Team, Inc. to operate this service; that until January 1, 1984, E/H was operated independently from Metro and had no common management or supervision with Metro; that because of the resignation of Mr. Sommers, the City entered into a six month interim contract, from January 1, 1984 through June 30, 1984, with ATE to manage and administer E/H; that because of the interim contract, Ron Barnes is now the General Manager of both Metro and E/H; that Metro and E/H are managed pursuant to separate and distinct management contracts; that the City is currently seeking bids for a new management contract for E/H, and should a management contract with a different company be entered into, ATE and Ron Barnes would have no further involvement with E/H; that there are currently nine bus drivers and seven clerical-type employees, including the positions of clerk dispatcher, typist/dispatcher and assistant scheduler, employed at E/H.

6. That in 1967, Teamsters was certified by the National Labor Relations Board as the exclusive bargaining representative for all drivers and garage employees, including mechanics, washers, janitors and helpers, but excluding office and clerical workers, guards, supervisors, confidential and managerial employees, employed at what is now known as Madison Metro; that Metro's employees were treated by all concerned as private sector employees until the National Labor Relations Board determined in a proceeding in 1983 that said employees were not covered by the National Labor Relations Act, but were rather public employees; that for purposes of this proceeding the parties stipulated that employees at Metro are employees of the City; that nearly all of Metro's operations are housed in a facility at 1101 East Washington Avenue, Madison, but a small number of Metro employees work out of the Downtown Transit Information Center (DTIC) office at 25 West Main Street in Madison.

7. That Teamsters Local 695 is the exclusive representative of a bargaining unit at E/H described in the E/H collective bargaining agreement as "all regular full-time and regular part-time employees in the position classifications of driver in the Elderly/Handicapped bargaining unit, excluding managerial, supervisory and confidential employees" 1/; and that the parties stipulated that for purposes of this proceeding, the E/H employees are employees of the City.

8. That in 1970, AFSCME was certified by the Wisconsin Employment Relations 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 of Madison 2/; that in that unit AFSCME represents employees in virtually every department in the City except Metro and E/H; that AFSCME has also been certified as bargaining representative for six other bargaining units of

1/ Although its E/H unit certification is not, on its face, limited to drivers, (See Decision No. 15352), Teamsters' E/H unit agreement has been expressly limited to drivers.

2/ Dec. No. 9949.

employees employed by the City of Madison; that following said certifications, the City and AFSCME have entered into a series of collective bargaining agreements covering wages, hours and conditions of employment of employees in the clerical unit and certain other of the AFSCME units of City employees; that in the most recent of those collective bargaining agreements, the recognition clause (Section 3.01) describes AFSCME as the exclusive bargaining agent for all employees occupying a wide range of clerical, technical and blue-collar position classifications.

9. That on November 23, 1983, Teamsters filed a petition with the Commission requesting that the Commission conduct an election among all full-time and regular part-time clerks, cashiers, typists, information operators, dispatchers, bookkeepers, receptionists and assistant schedulers employed at Metro Bus, E/H Bus Service and DTIC, but excluding supervisors, managerial employees and guards, to determine whether said employees in said claimed appropriate unit desired to be represented by Teamsters for the purpose of collective bargaining; that at the first day of hearing, Teamsters modified its position and requested the Commission to conduct an election among said unrepresented employees whereby they would choose whether to be included in the Teamster bargaining unit at Metro or in the City-wide clerical unit represented by AFSCME.

10. That at hearing on January 24, 1984, AFSCME appeared and moved to intervene in the proceedings on the basis that the unrepresented employees in question share a community of interest with the existing certified clerical bargaining unit described above in Finding of Fact 8; and that said motion was granted.

11. That the positions at Metro which the parties stipulated were municipal employees include: maintenance clerk, drafting technician, information operator, transit survey coordinator, ticket sales coordinator, purchasing/accounting technician, cashier, parts room clerk, operation clerk and payroll clerk; and that at the time of hearing, there were thirteen full-time and seven part-time employees holding such positions. 3/

12. That the positions at E/H which the parties stipulated were municipal employees include: clerk dispatcher, lead clerk/dispatcher, assistant scheduler, and typist/dispatcher; that at the time of hearing, there were three full-time and four part-time employees holding said positions. 4/

13. That Teamsters contend that all of the unrepresented employees could appropriately choose through an election to be included in the existing Metro unit of drivers and garage employees since they share a strong community of interest with those represented employees, and that such a choice by the employees would not result in fragmentation of bargaining units.

14. That AFSCME contends that the unrepresented employees share a community of interest with other clerical workers currently represented by AFSCME and that to avoid undue fragmentation, said employees should be unconditionally included in the clerical bargaining unit represented by AFSCME, or, in the alternative, the Commission should conduct an election by which said employees could either vote to be included in AFSCME's present unit or vote to remain unrepresented.

15. That the City opposes the creation of a separate bargaining unit as constituting undue fragmentation, but takes no further position in the matter except to argue that unrepresented E/H employees ought not to be included in the Metro unit.

16. That it has been stipulated by all the parties that at all times material herein the employees in question have not, in fact, been represented by any labor organization for the purposes of collective bargaining of wages, hours and conditions of employment. 5/

3/ See Exhibit 10.

4/ Ibid.

5/ See Finding of Fact 7 and accompanying footnote.

17. That the unrepresented employees at both Metro and E/H perform duties either identical to or similar to duties performed by clerical employees in the AFSCME clerical bargaining unit.

18. That at no time has AFSCME been recognized or certified as representative of any employees at either Metro or E/H.

19. That the unrepresented municipal employees at both Metro and E/H have historically been covered by the Teamster Health and Welfare Plan; that they are currently covered by said plan and pay no part of the contribution to said Plan; that no AFSCME employees are covered by said Plan, and that under the City agreement AFSCME employees currently pay a portion of their health insurance premium; that (except for a few Metro employees at DTIC) all of the unrepresented employees in question currently share the same work location on East Washington and share a common lounge with both groups of Teamster-represented employees; that no AFSCME employee is employed at the East Washington and DTIC locations; that there have been no transfers of any unrepresented employees with any AFSCME represented employees; that since January 1, 1984, all of the unrepresented employees have shared the same General Manager, Mr. Ron Barnes, but they share no other common management or supervision; and that no AFSCME employees are supervised by the General Manager or any other supervisor of Metro or E/H.

20. That unrepresented employees at Metro have traditionally received the same percentage wage increases and the same fringe benefits as those negotiated for and received by Teamster-represented employees at Metro, including sick leave, vacations, holidays, longevity, pension plan, and health insurance benefits.

21. That there have been several transfers between unrepresented employees at Metro and Teamster-represented employees at Metro including the transfers of Terry Webb, who was hired as a receptionist and transferred into the bargaining unit as a Service Worker; Jeff Fasso, who was hired as an Information Operator and transferred to the bargaining unit as a Janitor; Geraldine Sprague, who transferred from Information Operator to part-time driver; and Dick Butler who began as a driver, transferred to the shop, then became a Parts-Clerk, and then transferred back to the shop; and that there is no evidence of any transfer of employees between Metro and E/H.

22. That postings for vacancies for clerical positions at Metro have traditionally stated that such job announcements are strictly limited to Metro employees only, and only if no qualified current Metro employee applies is the recruitment opened up to the general public including other City employees; that in filling vacancies, Metro handles hiring internally unless they receive a large number of applications, at which point they request the assistance of the City Personnel Department and then reimburse the City for the hours of assistance; and that separate salary and sick leave records and vacation schedules are kept at Metro.

23. That for the last two years all of E/H's operations have been housed in the same facility as Metro but, in separate offices; that there has been some discussion between E/H's current general manager and City officials about E/H moving out of the current facility because of lack of space; that there is no evidence of any transfers between employees at E/H and employees at Metro; that full-time unrepresented employees at E/H traditionally receive similar fringe benefits as those negotiated and received by Teamster represented drivers at E/H; and that part-time employees at E/H receive some of those benefits on a pro-rated basis.

CONCLUSIONS OF LAW

1. That it would be appropriate to include all full-time and regular part-time clerical and related employees at Madison Metro (including those working at DTIC), but excluding confidential, supervisory, managerial, executive and craft employees, in either the bargaining unit at Madison Metro currently represented by Teamsters Local 695 or in the bargaining unit of clerical employees of the City of Madison, currently represented by AFSCME.

2. That it would be appropriate to include all full-time and regular part-time clerical and related employees, but excluding confidential, supervisory, managerial, executive and craft employees, at E/H in either the bargaining unit at E/H currently represented by Teamsters Local 695 or in the bargaining unit of clerical and related employees of the City of Madison currently represented by AFSCME; but that it would not be appropriate to include said clerical employees at E/H in the existing bargaining unit at Madison Metro.

3. That a question of representation has arisen, within the meaning of Sec. 111.70(4)(d)1, of the Municipal Employment Relations Act, among the employees of the City of Madison described in Conclusions of Law 1 and 2, above.

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

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive among certain employees of the City of Madison in the following voting groups for the following stated purposes:

Voting Group No. 1

All regular full-time and regular part-time clerical and related employees of the City of Madison at Madison Metro Service Corporation, excluding confidential, supervisory, managerial, executive and craft employees, who were employed on June 8, 1984, except those employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by General Drivers and Helpers Union Local No. 695, International Brotherhood of Teamsters, as part of the existing bargaining unit of drivers and garage employees at Madison Metro, or by Local 60, AFSCME, AFL-CIO, as part of the existing bargaining unit of clerical employees employed by the City of Madison, or by no representative, for the purposes of collective bargaining with the City of Madison on matters relating to wages, hours and conditions of employment.

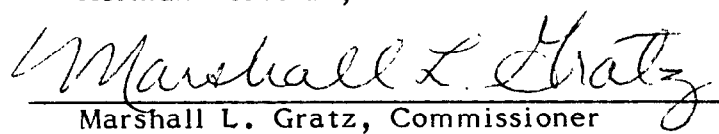
Voting Group No. 2

All regular full-time and regular part-time clerical and related employees of the City of Madison at E/H Bus Service, excluding confidential, supervisory, managerial, executive and craft employees, who were employed on June 8, 1984, except those employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by General Drivers and Helpers Union Local No. 695, International Brotherhood of Teamsters, as part of the existing bargaining unit of drivers at E/H Bus Service or by Local 60, AFSCME, AFL-CIO, as part of the existing bargaining unit of clerical employees employed by the City of Madison, or by no representative, for the purposes of collective bargaining with the City of Madison on matters relating to wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 8th day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Marshall L. Gratz, Commissioner

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

BACKGROUND AND POSITIONS OF THE PARTIES

The instant proceeding was initiated by Teamsters' petition for an election in a separate unit of currently-unrepresented clerical and related employees of the City working in the City's Madison Metro and E/H operations. At the hearing, Teamsters modified their petition to request an election among those employees to determine whether they prefer to be included in the Teamsters' Metro unit or in the AFSCME clerical unit. Teamsters argue that the employees should have an opportunity to vote for the representative of their choice in this matter. 6/ Teamsters note that their amended request avoids splitting the unrepresented clerical group and gives them an opportunity to become included with the Metro unit employees with whom they share a community of interest based on common work location, frequent interactions, shared overall management and supervision, and frequent transfer. Teamsters emphasize that Madison Metro has substantially more organizational independence from central City control than do most other City government operations. Teamsters also argue that the unrepresented group shares with the Metro unit a history of coverage by the Teamsters Health and Welfare Plan, identical wage increases with those negotiated for the drivers, and coverage under the Urban Mass Transit Act 13(c) agreement guaranteeing nondiminution of their terms and conditions of employment relative to what they enjoyed before the City became their employer. Finally, Teamsters argue that because their proposal would create no new City bargaining units, it would not run contrary to the statutory anti-fragmentation policy.

AFSCME opposes Teamsters' request and asks instead either that the unrepresented employees be unconditionally included (i.e., without a vote) within AFSCME's multi-departmental unit of clerical and related City employees or that an election be conducted among the unrepresented employees to determine whether they prefer to be included in that AFSCME unit or to remain unrepresented. AFSCME notes that its unit consists of some 150 clerical and related employees from essentially all of the other departments of City government. AFSCME asserts that in Sun Prairie Schools 7/, the Commission rejected, on anti-fragmentation policy grounds, a proposed unit arrangement whereby employees with similar job functions could wind up in more than one bargaining unit of the municipal employer. AFSCME asserts that the rationale in the Sun Prairie Schools case requires that the clerical and related employees at issue herein be included only in the AFSCME unit which consists of clerical and related employees rather than in the Teamster units which do not include any employees with clerical job functions. Finally, AFSCME asserts that inclusion of the employees in its unit ought not be conditioned on a vote among the employees since the Commission, in Portage County 8/, stated that such a vote was necessary only if--unlike here--unconditional inclusion of the employees could affect the union's majority status.

The City takes no position in the matter except to argue that the unrepresented E/H employees ought not be included in the Metro unit. In that regard, the City argues that the existing Metro and E/H units have historically been separate and do not share a community of interest. The City notes that the two operations are managed pursuant to separate management contracts and that whatever common management now exists cannot reliably be assumed to remain common in the future. Finally, the City notes that fringe benefits of the unrepresented Metro employees parallel those of Metro unit employees whereas those of unrepresented E/H employees parallel those of the E/H employees.

6/ Citing, City of Franklin, Dec. No. 18208 (11/80); Milwaukee County, (Institutions), Dec. No. 18685 (5/81); and City of Wisconsin Rapids, Dec. No. 13753 (6/75).

7/ Dec. No. 20459 (3/83).

8/ Dec. No. 18792 (6/81),

All eligibility disputes were resolved by the parties prior to or at the hearing. 9/

DISCUSSION

We share the parties' apparent view that creation of one or two separate units to include the currently unrepresented City employees at the Metro and E/H operations would constitute undue fragmentation. However, while the Sun Prairie Schools case, above, demonstrates that community of interest and antifragmentation considerations generally coalesce to avoid creation of more than one unit including employees with the same or similar job functions, that case does not establish the sort of hard and fast rule suggested in AFSCME's argument based upon it. 10/ Rather, the Commission's unit determination process remains a case-by-case determination based on the oft-repeated set of considerations:

1. Whether the employees in the unit 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 the employees in the unit sought as compared to the wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have a 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 the workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

9/ Initially, there was a dispute over which employees were confidential employees. During the course of the hearings the parties stipulated that Sue Purcell and Barb Sauter, both employees at Metro, would be considered confidential. With regard to E/H, the parties stipulated that Linda Netzloff was union eligible at this time, but that the City reserved its right to establish a confidential clerical position at a later date at E/H, with any subsequent dispute being resolved through a petition for unit clarification.

10/ In that case, the Commission rejected the Association's proposal that instructional aides either be established as a new separate unit or included with the professional teachers if the latter group voted to be included with nonprofessionals. As AFSCME has noted, the Commission did rely in part on the fact that the existing AFSCME unit included certain aide classifications in concluding that the Association's proposed unit arrangement was inappropriate. However, the principal problem that the Commission had with the Association's position in Sun Prairie Schools was that either of its proposed outcomes involved a possibility of creating an additional unit to those already in existence--either by creating the separate unit directly or by creating it in the event that the professionals voted not to be included with the nonprofessional instructional aides. It was the possibility of creating a separate unit of instructional aides rather than the inclusion of aide classifications in more than one existing unit that presented the anti-fragmentation dimension of the Commission's rationale in that case. As noted in the text above, community of interest will ordinarily argue strongly for inclusion of classifications with similar job functions in the same bargaining unit. There are, however, additional factors that can, in some cases, overcome that factor so as to render other outcomes appropriate as well.

The existing Metro and E/H units represented by Teamsters are essentially blue-collar in nature. The Metro unit consists of some 270 employees and includes drivers, mechanics, bus cleaners, janitors, and various other garage positions including garage dispatcher. 11/ The E/H unit consists of nine bus drivers. Because the City provides bus service late into the night and over the weekends, many of the employees currently in the E/H and Metro units have work schedules of hours that differ from those of most of the unrepresented employees at those operations.

The City clerical unit represented by AFSCME includes a wide range of clerical and related positions. The position titles of the unrepresented employees suggest that their duties are primarily clerical and related rather than blue-collar in nature. The similarity of job duties, skill levels, and hours of work tend to support the existence of a community of interest between the unrepresented employees at issue and the employees currently in the City-wide clerical and related unit represented by AFSCME.

On the other hand, there are also significant factors which tend to establish a community of interest between the two groups of unrepresented employees and the employees in the Teamster-represented unit at their respective operations. Primary among these factors are the shared work location, transfer between the two groups (at least at Metro), common supervision and the enjoyment of similar fringe benefits and wage settlement patterns.

There is, however, less of a basis for finding a community of interest between the E/H clericals and the Metro unit. Until January 1, 1984, the E/H Bus Service operation had almost no ties with Madison Metro other than a shared location. There is no shared supervision except for a common General Manager, and that arrangement is only an interim one in effect January-June, 1984. There is no evidence of transfers between E/H clericals and Metro employees. E/H clericals' fringe benefits more closely parallel those bargained with the E/H drivers than those bargained with the Metro unit, and the two operations continue to be managed under separate management contracts.

We therefore conclude that the unrepresented E/H clericals have a greater community of interest with E/H drivers than with the Metro drivers and garage employees. Hence, given the existing unit arrangements, we conclude that it would not be appropriate to include the E/H clericals in the existing Metro unit.

We agree with AFSCME that inclusion of clericals in more than one unit would ordinarily be an outcome that the Commission's multi-factor analysis would lead us to avoid. However, the particular facts of this case, as noted above, present sufficiently strong countervailing considerations to warrant a different outcome if that is the arrangement preferred by a majority of the employees voting in either of the respective groups.

Accordingly, we have directed an election to determine the preferences of the respective groups of unrepresented employees at E/H and Metro. 12/

Dated at Madison, Wisconsin this 8th day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

 _____
Marshall L. Gratz, Commissioner

11/ The several positions in the driver dispatcher classification have been excluded by stipulation as supervisory.

12/ Since we have decided to provide the employees a vote in this matter, we are bound by MERA to give them the alternative of voting, instead, in favor of no representation. In that regard, Sec. 111.70(4)(d)3, Stats., states:

" . . . Any ballot used in a representation proceeding shall include the names of all persons having an interest in representing or the results. The ballot should be so designed as to permit a vote against representation by any candidate named on the ballot . . ."