

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
MILWAUKEE DISTRICT COUNCIL 48,	:	
AFSCME, AFL-CIO and its affiliated	:	Case 48
LOCAL 742	:	No. 41845 ME-317
	:	Decision No. 21887-B
For Clarification of a Bargaining	:	
Unit of Employees of	:	
	:	
THE CITY OF CUDAHY	:	
	:	

Appearances:
Podell, Ugent & Cross, S.C., Attorneys at Law, 207 East Michigan Street,
Milwaukee, Wisconsin 53202, by Ms. Monica Murphy, with Mr. Alvin R.
Ugent on the brief, for the Union.
Mulcahy & Wherry, S.C., Attorneys at Law, Suite 1600, 815 East Mason Street,
Milwaukee, Wisconsin 53202, by Mr. Robert W. Mulcahy, for the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER CLARIFYING BARGAINING UNIT

Milwaukee District Council 48, AFL-CIO, and its affiliated Local 742, filed a petition with the Commission on February 27, 1989, requesting a unit clarification order including newly-created Emergency Service Dispatcher positions in a unit of City of Cudahy employees represented by that Union. A hearing was conducted in the matter in Cudahy, Wisconsin, on June 8, 1989, by Commission Examiner Marshall L. Gratz. Following distribution of transcript, the parties completed briefing on August 23, 1989. The Commission has considered the evidence and arguments of the parties, including administrative notice taken of prior Commission proceedings involving the instant bargaining unit and, being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Milwaukee District Council 48, AFSCME, and its affiliated Local 742, hereinafter referred to as the Union, is a labor organization having its principal offices located at 3427 West Saint Paul Avenue, Milwaukee, Wisconsin.
2. The City of Cudahy, hereinafter referred to as the City, is a municipal employer having its principal offices located at 5050 South Lake Drive, Cudahy, Wisconsin.
3. On August 22, 1962, in City of Cudahy, Dec. No. 6028, following an election conducted by it, the Commission certified the Union as the exclusive collective bargaining representative of the employees of the City employed in the following unit:

All regular full-time employees employed in the Department of
Public Works and Water Department excluding office and
clerical employees, engineers, engineer trainees,
supervisors and executives and all craft employees.
4. On September 3, 1968, the Common Council of the City adopted Resolution No. 2300, recognizing the Union as the exclusive bargaining agent for "certain clerical employees in a specific unit in the City Hall in the Assessor's, Clerk's, Treasurer's, Engineer's, Inspector's, and Water Utility Offices and the two custodial positions in the City Hall."
5. The parties voluntarily expanded the collective bargaining unit recognized in Resolution No. 2300 to include the certified bargaining unit noted in Finding of Fact 3.
6. On December 7, 1981, the Union filed a petition requesting the Commission to clarify the bargaining unit represented by the Union by determining whether the position of Police Clerk and Department of Public Works Cost and Records Clerk should be included in said unit. The Commission, on December 15, 1982, in Dec. No. 19451-A, 19452-A, determined that it would be inappropriate to expand the voluntarily-recognized unit as requested without an election and accordingly dismissed the petition for unit clarification.
7. The Union and the City were parties to a 1983-1985 collective bargaining agreement containing the following provisions:

ARTICLE I - RECOGNITION

Exclusive recognition: The City hereby recognizes the Union as the exclusive collective bargaining agent for the appropriate certified bargaining units (and recognized units) by City of Cudahy Resolution No. 2300, and as a certified representative for those employed in these bargaining units occupying the classifications as defined in the appropriate "Certification of Representatives" promulgated by the Wisconsin Employment Relations Commission, and clerical and custodial employees of the City as determined by Wisconsin Law

There is no contention or evidence to suggest that the parties' recognition clause(s) in subsequent agreements has (have) materially changed from that set forth above.

8. In City of Cudahy, Dec. No. 21887 (WERC, 8/84) the Union petitioned for an election for the stated purpose of determining whether all municipal employees employed by the City who were not then currently represented for purposes of collective bargaining wished to be represented for collective bargaining purposes by the Union. The Commission directed an election in what the Commission called a "residual" voting group and subsequently certified that by reason of the majority of that group voting favoring Union representation, "all regular full-time and regular part-time employees of the City of Cudahy in the positions of Police Clerk, Health Department Clerk, DPW Cost and Records Clerk, Engineering Aide and Engineering Technical I" were to be included in the existing voluntarily-recognized non-professional collective bargaining unit represented by the Union. In that same case, the Union sought to include various Library positions in the voting group, but the City objected on the grounds that they were employees of a separate municipal employer, to wit, the Cudahy Library Board, and the Commission concurred with the City's position in that regard, such that Library employees were not included in the voting group.

9. On February 21, 1989, in Order No. 1445, the Common Council of the City of Cudahy approved an ordinance establishing Emergency Service Dispatcher (also referred to herein as Dispatcher) positions. The City of Cudahy Civil Service Commission Emergency Service Dispatcher job description identifies the distinguishing features of the classification as follows:

The employee of this class serves as an Emergency Service Dispatcher taking and relaying messages, dispatching personnel and equipment by radio communication in response to calls for service for police, fire, rescue and ambulance personnel and equipment.

The employee in this class is responsible for the receipt and accurate transcription of verbal communication by radio and telephone and for various related clerical functions in the Communications Center. The employee in this class acts with independence of judgement and discretion. The work is performed within established guidelines and under the general supervision of the Administrative Secretary and/or Shift Commander.

It sets the following examples of Work for this Class of Employee:

Operates and maintains a radio and telecommunication system with mobile patrols, firefighters and rescue and ambulance personnel; learns and uses various national and state codes for dispatching; operates teletype equipment to procure needed information; answers telephone and personal requests for information; dispatches officers and other emergency personnel to required locations; maintains a typewritten log of radio calls as required by the FCC; assists in the completion of complaints, accidents and other similar forms; types and files related records and forms; monitors such alarms as may be required; works at the Central Desk and answers requests for aid and information; collects and issues receipts for the sale of permits, licenses, report copies and collection of fines; leads tours of the communication Center and does other public relations work; perform duties of jail matron if so required; perform other duties that may be assigned.

10. The Dispatcher positions were created to allow police officers to devote their time to other work. Previously, police officers, supervisors, officers and clerks performed dispatching duties.

11. Among the positions presented included in the Local 742 bargaining unit are the Police Clerks. The City of Cudahy Police Department job description for Police Clerks describes the duties of that position as follows:

Perform routine, non-routine and special assigned duties in all phases of work in the Cudahy Police Department. Work assignments may be made by the Chief of Police or Command Officers authorized by him to do so.

Take shorthand, type, use dictaphone, teletype, computers, radio dispatch, time recorders, finger-printing equipment, cameras, maintain files and records and perform any other duties and assignments as directed. Prepare specialized reports for the NCIC, FBI, CIB, higher courts and research groups.

Take depositions in shorthand. Perform court clerk duties, type summons, warrants, complaints and transcripts on appeals. Record on tape all court proceedings and forwarding reports to the Motor Vehicle Department (subject to fines for late filing under State Statutes.)

Collect fines and bail and record on computerized cash register. Handle disbursements, write checks and balance checkbook.

Dispatch squads by radio, record arrival time, movement time and termination of calls on time recording machine. Record fingerprints and photograph suspects. Handle and record emergency calls.

Act as matrons, search women prisoners, accompany sworn officers transporting prisoners. Witness interviewing and questioning of women suspects.

Type notices and minutes for Fire & Police Commission. Prepare correspondence and reports for Commission. Prepare advertisements for vacancies in the Fire and Police Departments. Receive and record applications for both Departments and inform applicants of various tests and exams.

Maintain records, statistical reports and bookings for FBI, CIB. This is routine and is generally unsupervised. Notarize necessary reports and legal documents. Take and record complaints and other duties which may be assigned by the Chief, Command Officers or designated sworn personnel.

12. There are four organized collective bargaining units of City employees: Police, Firefighters, Technical and Health Service employees, and the above-noted unit represented by Local 742. The Police and Firefighters consist of sworn law enforcement and firefighting employees, respectively. The Technician Unit consists of nurses, technicians, electrical and sanitary workers. The Technical Unit has expressly stated that it "is not interested in petitioning for the 911 Dispatcher positions" in a June 2, 1989 letter from the President of the Technical Unit to the President of Local 742.

13. The salary, retirement benefits, life, health and dental insurance, and the vacation, holiday, and sick leave benefits offered to the Dispatchers are similar, and in some cases identical to, the wages and benefits received by Local 742 unit members. Although the Local 742 unit clerical employees work first shift and the Dispatchers will work around the clock, there are some employees in the Water Department in the Local 742 unit who work on a three shift basis as well.

14. Both the Police Clerks and the Dispatchers are supervised by the Chief of Police and by his duly assigned Shift Commander.

15. The Dispatchers work in the City Hall police department as do the Police Clerks. The two groups of employees work in direct proximity to one another and have numerous interactions throughout the day.

16. It is possible that within the next two years the City's Dispatchers may be merged with dispatchers from other communities.

17. Although the City's Council has authorized three full-time and five part-time Dispatcher positions, the Union seeks herein to unconditionally include all regular full-time and regular part-time Dispatchers to its voluntarily-recognized bargaining unit. As of the date of hearing, only two full-time and two part-time Dispatchers had been hired, and they were in the process of being trained. The City cannot determine at present how many more Dispatchers will be hired, or when they will be hired. However, the inclusion of the presently authorized complement of eight positions would not affect the Union's majority status in its existing unit of approximately 56 employees.

18. The Union filed the instant petition on February 27, 1989, and the City has objected to the proposed unconditional inclusion of Dispatchers in the

Local 742 unit proposed therein on various grounds.

19. On July 24, 1989, the Union filed another petition for unit clarification concerning the same bargaining unit, requesting unconditional inclusion of what the petition listed as the following positions at the Cudahy Library:

part-time:

1 Library Assistant I
1 Library Assistant II
2 Librarian I
1 Sec./Bookkeeper

full-time:

2 Library Assistant I
2 Librarian I
1 Librarian II

excluding:

Head Librarian
Pages

The status of that case at present is that it is pending but no hearing has as yet been conducted. The City contends that the record in the instant proceeding should be reopened to consider the implications of the Union's abovenoted petition concerning inclusion of these additional employees in the instant bargaining unit.

20. As noted in Finding of Fact 8, above, the status of Library employees at present is that they are excluded from the Local 742 unit as employees of a separate municipal employer. The Union's July 24, 1989 petition does not assert that there has been a change in the municipal employer status of those positions. Even if it develops that there has been such a change, and even if it further develops that the Commission concludes that the inclusion of Library employees in the instant unit is otherwise appropriate, the combination of the eight Dispatcher positions and ten Library positions sought by the Union would not affect the Union's majority status in the existing unit which presently consists of some 56 positions.

CONCLUSIONS OF LAW

1. The instant petition is ripe for adjudication at the present time notwithstanding the facts that the Dispatchers hired to date are in training and do not constitute the full anticipated complement; notwithstanding the possibility that the City's Dispatchers may be combined at some indefinite future date with dispatchers from other communities; and notwithstanding the unheard pendency of the Union's July 24, 1989 petition for unconditional inclusion of certain Library positions in the bargaining unit at issue herein.

2. Placement of the Dispatchers at issue in the voluntarily-recognized bargaining unit represented by the Union is appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. Under Sec. 111.70(4)(d)2.a., Stats., it is neither necessary nor appropriate to condition the inclusion of the Dispatchers in that unit on a secret ballot representation vote among the Dispatchers.

ORDER CLARIFYING BARGAINING UNIT 1/

All regular full-time and regular part-time Emergency Service Dispatchers of the City of Cudahy, excluding supervisors, confidential employees and managerial employees shall be and hereby are included in the bargaining unit of City employees presently represented by the Union.

Given under our hands and seal at the City of
Madison, Wisconsin this 5th day of January,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

(Footnote 1/ continued on page 6)

1/ Continued

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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
CLARIFYING BARGAINING UNIT

POSITION OF THE UNION

The Union's request for accretion without a vote should be granted. Viewing the unit as a certified unit, the newly-created Dispatcher positions share a community of interest with that unit and are properly unconditionally included in it. Even if the existing unit is viewed as a voluntarily-recognized unit, the Commission's policies limiting expansion of voluntarily-recognized units would not preclude expansion of the unit since the Dispatcher positions did not exist at the time the unit was last restructured, and the small number of Dispatcher positions is not enough to affect the Union's majority status in the existing 56 person unit.

The Commission should reject the City's contention that the Dispatchers do not belong in the Local 742 unit. They belong in Local 742 unit based on the Commission's established criteria for unit determination: a shared community of interest distinct from that of other employees; a similarity of duties, skills, wages, hours and working conditions in the unit sought as compared with the other employees in the Local 742 unit; commonality of supervision and workplace with other employees in the Local 742 unit; and the fact that a separate unit of Dispatchers would result in undue fragmentation of bargaining units. Citing, Manitowoc County (Sheriff's Department), Dec. No. 25851 (WERC, 1/89); Dane County, Dec. No. 17278-A (WERC, 11/87). The fact that other municipalities have voluntarily created separate Dispatcher units does not mean that the Commission, upon applying its criteria, would or should do so where, as here, an affected party objects to a separate unit for Dispatchers.

The City's request for a self-determination election among the Dispatchers should be denied. Granting this small group of employees a vote on whether to accrete to the Local 742 unit would mean that a majority in the voting group could vote no, which would improperly strand the group themselves as an unrepresented fragment that otherwise belongs in the Local 742 unit.

POSITION OF THE CITY

The Union's petition should be dismissed as premature because it is unclear at the time of hearing in this matter just when and how many Dispatcher positions will ultimately be filled, just what the Dispatcher's duties will be since those hired are still in training, and whether the City's telecommunications function will be combined with those of other communities.

In the alternative, the petition should be dismissed because the Union has not requested that a representation election be conducted, and a representation vote is necessary whether the appropriate unit is that represented by Local 742 or not. Hence, even if the Commission concludes that the Local 742 unit is an appropriate unit in which to include the Dispatchers (which the City does not concede) there is a strong MERA policy favoring employee freedom of choice that requires that the Dispatchers be given an opportunity to determine whether they wish to be represented for purposes of collective bargaining. Citing Sec. 111.70(6), Stats., ("it is in the public interest that municipal employees so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representative of their own choice.")

In addition, the Commission's Cudahy doctrine, reaffirmed in subsequent cases, is that the Commission will not expand certain voluntarily-recognized units without an election. Citing, City of Cudahy, Dec. Nos. 12997 (WERC, 9/74) and 19451-A (WERC, 12/82) and Manitowoc County, Dec. No. 18351-A (WERC, 3/83). Since the instant unit is basically voluntarily-recognized, and since the description of the voluntarily-recognized unit could not implicitly or explicitly exclude the positions at issue since they did not exist at the time that description was developed, that doctrine does not apply herein.

However, it does not automatically follow that the requested accretion must therefore be ordered; for, the Cudahy doctrine is not the only Commission policy which dictates that accretion without a vote is, at times, impermissible in voluntarily-recognized bargaining units. Thus, the Commission has held that it is not appropriate to permit a union to enlarge a voluntarily-recognized unit in a piece-meal fashion without the employees involved being provided with an opportunity to participate in the designation of their bargaining representative. Citing, Walworth County Handicapped Children's Board, Dec. No. 17129 (WERC, 7/79) and City of Superior, Dec. No. 23313-A (WERC, 2/86), and IAM District Lodge 190 v. NLRB, 119 LRRM 2488, 2490-92 (CA9, 1985) (under NLRA, accretion is a narrower doctrine than a determination that a combined grouping of old and new employees is an appropriate unit; denial of accretion would not preclude subsequent inclusion in existing unit after a self-determination vote favoring such inclusion). The voluntary recognition that has previously been extended to the Union regarding the instant unit creates a presumption of

majority status regarding only the positions now in that unit. The presumption does not extend to the employees holding the newly created Dispatcher positions. Citing, Walworth, supra.

In its reply brief, the City also argues that "under the conditions initially announced by the Commission in Cudahy and affirmed in Manitowoc County, the unit clarification petition filed by the Union must be dismissed." City Reply Brief at 7. Thus, the City appears to be arguing that whether the Cudahy/Manitowoc County doctrine applies herein or not, accretion without a vote is not appropriate in this case.

Finally, the City argues that if the Commission does not dismiss the petition outright, the record must be reopened in light of post-hearing developments. Specifically, because the Union filed an additional unit clarification petition potentially affecting this unit on or about July 21, the record needs to be reopened to consider this new development and to determine the number of employees involved to avoid piece-meal resolution and to consider the impact of that additional petition on the appropriateness of inclusion of the Dispatchers in the Local 742 unit.

DISCUSSION

Ripeness of Union's Petition

We find this dispute ripe for determination at this time. The fact that the City may be filling more of the authorized Dispatcher positions does not prevent us from making a determination as to the proper unit placement of the City's Dispatchers. The fact that the incumbents hired to date have not completed training does not prevent us from determining the nature of their work with sufficient specificity and scope to meet the needs of a unit placement decision. Finally, the possibility that in the indefinite future the City's telecommunications function may be combined with that of other municipalities 2/ is not sufficient to warrant delaying a determination of the issues raised by the petition.

Effect of Voluntary Recognition of Unit

We agree with the City that the historical development of the instant unit renders it a voluntarily-recognized unit for purposes of applying the principles developed in the Cudahy cases and their progeny cited by the parties herein. In City of Sheboygan, Dec. No. 7378-A (WERC, 5/89) (footnotes omitted) we summarized various cases including those giving rise to the Cudahy doctrine, as follows:

. . . in a unit clarification proceeding the Commission will not alter the voluntarily agreed upon composition of a bargaining unit over the objection by one of the parties to said agreement unless:

1. The position(s) in dispute did not exist at the time of the agreement; or
2. the position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential etc. or
3. the position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; or
4. the existing unit is repugnant to the Act.

It follows that because the instant positions did not exist at the time of the agreements affecting the scope of the instant unit, the voluntarily-recognized nature of the unit is of no consequence in determining the propriety of including the Dispatchers in the existing voluntarily-recognized bargaining unit. See also, Dane County, Dec. No. 15696-A (WERC, 12/88) and Tomahawk Unified School District No. 1, Dec. No. 12483-A (WERC, 5/74).

Bargaining Unit in Which Dispatchers Should be Placed

The Commission has recently noted that "Once a residual unit is established, thereafter all new positions are either placed in said unit or in existing units, as appropriate, assuming the continuing majority status of the union is not implicated so as to require an election." West Allis-West Milwaukee School District, Dec. No. 16405-A (WERC, 9/89) at Note 3, Page 13.

As noted in Finding of Fact 8, above, the most recent Commission election

2/ Mayor Pekar testified that although the City was obligated to become part of the E-911 system prior to September 1991, there was no specific time frame within municipalities would make a merger decision.

proceeding affecting the instant unit was one in which the Union sought to include all remaining unrepresented employees of the City. Although the voting group specified in the Commission's Direction of Election and Certification of Results in that case consisted of a listing of classifications, the language of the Commission's Direction discussion makes it clear that the Commission considered the voting group involved to be a "residual" one. Thus, for example, in Note 37 at Page 14 of City of Cudahy, Dec. No. 21887 (WERC, 8/84), the Commission specifically referred to the voting group as "the residual group" and "the residual employee group."

The Dispatchers clearly would not appropriately belong in any of the other existing units consisting of Police, Firefighters, Technical and Health Service Employees. It would be inappropriate to place the non-power of arrest Dispatchers with either the sworn law enforcement personnel or the firefighter personnel. Nor is it appropriate to place the Dispatchers in the Technical Unit because it consists of higher skilled public health nurses, technicians, electrical and sanitary workers.

For the foregoing reasons alone, we would conclude that the Dispatchers belong in the existing Local 742 bargaining unit. If further analysis under established unit determination criteria were undertaken, the same conclusion would be reached. The Commission's well-established unit determination criteria are as follows:

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 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 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 employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units, and bargaining history.
7. Bargaining history.

E.g., Chippewa County, Dec. No. 26126 (WERC, 8/89).

The duties and skills of the Dispatchers are in many respects similar to those of clerical employees especially including the Police Clerks. The pay scale and benefits of the Dispatchers are similar, if not identical to those received by Local 742 unit members. Some employees in the Water Department represented by Local 742 work three shifts as do the Emergency Service Dispatchers, and the Police Clerks and Dispatchers share common supervision.

Including the Dispatchers in the existing Local 742 unit would avoid potential undue fragmentation. Section 111.70(4)(d)2.a., Stats., provides that "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." That statutory anti-fragmentation policy seems especially important given the relatively small number of Dispatcher positions presently authorized. The Commission balances that statutory anti-fragmentation policy against the statutorily recognized importance of employee free choice noted by the City in cases of this kind. The City's emphasis on the latter policy consideration would seemingly have the Commission conducting accretion votes routinely whenever a position is newly created in any voluntarily-recognized bargaining unit state-wide. That is simply not the balance that the Commission's cases have reached between these competing interests. While there are voluntarily-recognized units of only dispatcher personnel in other communities, the City has not cited any dispatcher units that have been held appropriate by the Commission over one parties' objection.

On the other hand, the Commission has recognized as appropriate bargaining units which combine dispatchers with clerical municipal employees. Thus, in Dane County, Dec. No. 17278-A (WERC, 11/87), supra, the Commission included a much large number of dispatchers who came for the first time to be County employees in an overall County unit without a vote.

Since the Dispatcher positions are newly-created in the City of Cudahy, there is no bargaining history available to help determine the appropriateness of the requested bargaining unit.

For the foregoing reasons, we conclude that the Dispatchers share a community of interest with the Local 742 employees, separate and distinct from the other employees of the City, and that they belong in the Local 742 bargaining unit and not in any other bargaining unit and not in a separate bargaining unit onto themselves.

City Request for Self-Determination Vote

The Commission recently had occasion to discuss, in dicta, the circumstances in which unconditional placement of positions (i.e., placement of positions in an existing unit by unit clarification) would be appropriate. In this regard, the Commission stated, "Placement in an existing unit through the unit clarification process would clearly be warranted if the . . . positions fell within the confines of an existing unit description. Thus, for instance, if there were a single existing overall unit consisting of nonprofessional . . . employees, we would simply include the . . . positions in that unit Placement in one of the existing units could also be warranted if the record demonstrated a compelling community of interest between the (disputed) employees and those in an existing unit." West Allis v. West Milwaukee School District, supra at 13.

Here it is reasonable to characterize the Local 742 unit as an overall nonprofessional unit in light of the most recent representation election proceeding references to the voting group therein as "residual," as noted above. Moreover, as noted above, there is a compelling community of interest between the Dispatchers and the existing bargaining unit for reasons noted above. Accordingly, we find it unnecessary and inappropriate to condition the inclusion of these newly created Dispatcher positions on the conduct and outcome of a vote among them. To do so would present the possibility that an unrepresented fragment of employees would be left unrepresented.

The City's reliance on Walworth County Handicapped Children's Board, Dec. No. 17129 (WERC, 7/79) and City of Superior, Dec. No. 23313-A (WERC, 2/86), and IAM District Lodge 190 v. NLRB, 119 LRRM 2488, 2490-92 (CA9, 1985) is misplaced. In Walworth the Commission dismissed an amended petition seeking unconditional inclusion of one newly-created professional position where several other such positions previously in existence had been expressly excluded when the unit was voluntarily established. In Superior, the positions involved existed prior to the voluntary agreement to a unit that did not include them, and the Commission was asked to (and proceeded to) direct an election among those positions to determine whether they wished to merge into the petitioner's existing voluntarily-recognized unit. Finally, the IAM case does not arise under MERA.

Effect of Pending Petition for Unconditional Inclusion of Library Employees

We have not granted the City's request that the processing of this case be held up pending a hearing with regard to the Union's petition for unconditional inclusion of Library personnel in the instant unit.

As Finding of Fact 8 points out, the Commission previously ruled that the Cudahy Library Board was a separate municipal employer such that Library employees could not lawfully be included in the City unit. City of Cudahy, Dec. No. 21887 (WERC, 8/84), supra. That remains the law of the case at this point in time, absent some showing by the Union that the City has become the municipal employer of the Library employees rather than the Library Board. Nothing on the face of the Union's petition concerning Library personnel or any City response thereto makes any reference to such a change in circumstances. Moreover, even if the ten Library positions sought by the Union were combined with the eight Dispatcher positions authorized to by the City to date, we do not perceive the resultant total to affect the Union's majority status in the existing unit. Accordingly, we do not find it necessary to delay our determination with respect to the instant petition unit until further information is gathered regarding the petition concerning Library employees.

Dated at Madison, Wisconsin this 5th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner