

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
LOCAL 742, MILWAUKEE DISTRICT
COUNCIL 48, AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF CUDAHY

Case XLVIII
No. 31681 ME-2226
Decision No. 21887

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law, 207 East Michigan Street,
Milwaukee, Wisconsin 53202, by Ms. Christine Linder, 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 DIRECTION OF ELECTION

Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 742, having, on May 27, 1983, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the City of Cudahy to determine whether said employees desired to be represented for the purpose of collective bargaining by said Union; and hearing having been conducted in Cudahy, Wisconsin, on August 31 and October 26, 1983, by Coleen A. Burns, an Examiner on the staff of the Commission; and a transcript having been prepared; and the parties having completed their briefing schedule by February 10, 1984; and the Commission having considered the evidence 1/ and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 742, hereinafter the Union, is a labor organization having its principal offices located at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

2. That the City of Cudahy, hereinafter the City, is a municipal employer having its principal offices located at 5050 South Lake Drive, Cudahy, Wisconsin 53110.

3. That on August 22, 1962, following an election conducted by it, the Wisconsin Employment Relations Commission certified the Union as the exclusive collective bargaining representative of the employees of the City employed in the following appropriate bargaining unit: 2/

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.

1/ By agreement of the parties, the Commission has taken official notice of the records upon which the following prior decisions were issued: City of Cudahy, Dec. Nos. 19451-A, 19452-A (WERC, 12/82) and 19507 (WERC, 3/82).

2/ City of Cudahy, Dec. No. 6028 (WERC, 8/62).

4. That 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. That the parties have voluntarily expanded the collective bargaining unit recognized in Resolution No. 2300 to include the certified bargaining unit noted in Finding of Fact 3.

6. That on December 7, 1981, the Union filed a petition requesting the Wisconsin Employment Relations Commission to clarify the bargaining unit represented by the Union by determining whether the positions of Police Clerk and Department of Public Works Cost and Records Clerk should be included in said unit; that the Commission determined that it would be inappropriate to expand the voluntarily recognized unit without an election; and that the Commission dismissed the petition for unit clarification on December 15, 1982. 3/

7. That the Union and the City are parties to a 1983-1985 collective bargaining agreement containing among its provisions the following:

ARTICLE I - RECOGNITION

1. 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 "Certifications of Representatives" promulgated by the Wisconsin Employment Relations Commission, and clerical and custodial employees of the City as determined by Wisconsin law. The Union recognizes its responsibility to cooperate with the City to assure maximum service at minimum cost to the public consonant with its obligations to the employees it represents.

8. That the Union, at hearing, stated that the purpose of the instant Petition for Election is to represent all municipal employees employed by the City who are not currently represented for the purposes of collective bargaining; and that the positions for which the Union is seeking representation are as follows:

Department of Public Works

Cost and Records Clerk
Engineering Technician I
Engineering Aide

Health Department

Health Clerk

Police Department

Police Clerk

Library

Adult Services Librarian, Librarian II
Children's Librarian, Librarian II
Cataloger, Librarian I
Clerk Typist, Library Assistant I
Secretary
Pages

3/ City of Cudahy, Dec. No. 19451-A, 19452-A (WERC, 12/82).

9. That the parties have stipulated that Inspector John Tomczyk and Assessor Thomas Mescaros are irregular part-time and, therefore, properly excluded from any collective bargaining unit deemed appropriate herein.

10. That the City asserts that the only method of expansion of the voluntarily recognized unit represented by the Union is an overall election in the unit and that the petition is untimely filed because it was filed during the pendency of a mediation-arbitration procedure involving employees represented by the Union, and additionally, at the time of hearing, the Union and City were parties to a collective bargaining agreement which covered employees represented by the Union; and that the City further asserts that the Union disclaimed interest in representing the Engineering Aide and Engineering Technician I at a prior proceeding before the Commission 4/ and, therefore, has waived the right to represent said employees.

11. That the City argues that, in the event that the Commission finds the petition to be timely filed, the voluntarily recognized collective bargaining unit represented by the Union should be severed into two units, blue collar and clerical; that the City maintains that the Police Clerks, Health Clerk, Engineering Aide, and Engineering Technician I lack a community of interest with employees represented by the Union; that the City asserts that the DPW Cost and Records Clerk is a confidential employee; that the City avers that Library employees are employees of the Library Board, and not the City; and that the City concludes that none of the positions listed in Finding of Fact 8, is appropriately included in the collective bargaining unit represented by the Union.

12. That the Union filed a Petition for Mediation-Arbitration with the Commission on December 20, 1982; that the Petition for Mediation-Arbitration involved employees represented by the Union; that, at the time of hearing on the instant petition, the Union and the City were parties to a collective bargaining agreement covering employees represented by the Union, which collective bargaining agreement expires on December 31, 1984; and that the employees occupying the positions set forth in Finding of Fact 8, were never represented by the Union and were not a party to the aforesaid Petition for Mediation-Arbitration or the 1983-1985 collective bargaining agreement.

13. That on May 26, 1981, the Cudahy Technical and Health Services Association filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the City of Cudahy to determine whether said employees desired to be represented for the purposes of collective bargaining; that the Engineering Aide and Engineering Technician I were among the positions which the Cudahy Technical and Health Services Association sought to represent; that, at hearing, the Union was permitted to intervene in the proceeding; that, during the course of the hearing, the Union disclaimed interest in representing the employees who were the subject of the petition, and withdrew as Intervenor; and that, on March 31, 1982, the Commission made a determination that the positions of Engineering Technician I and Engineering Aide were not professional, and, therefore, should be excluded from the bargaining unit of professional employees sought by the Cudahy Technical and Health Services Association.

14. That the Cudahy Library Board was established by a City of Cudahy Ordinance in accordance with the Provisions of Chapter 43, Wis. Stats.; that the members of the Library Board are appointed by the City Mayor and confirmed by the City Common Council; that the Library budget is prepared by the Library Board, with the assistance of the Library Director; that the City Common Council approves and funds the Library budget; that once the monies are appropriated by the Common Council, the monies are subject to the control of the Library Board; that Sec. 43.80(4), Stats., provides that the Library Board may appoint employees, and prescribe their duties and compensation; that the Library Board determines the number and kinds of workers to be employed in the library, as well as their wages.

employees; that part-time employees are not subject to the City Civil Service process; that the Library Board has final authority with respect to hiring Library employees; that Library employees are supervised by the Library Director; that, during the tenure of the present Library Director, approximately fifteen years, there has been one promotion within the Library; that the promotion involved movement from the Librarian I position to the Librarian II position; that the promotion was made by the Library Board and was based upon the fact that the employee had received her Master's Degree; that the Library does not have a formal grievance procedure; that employee problems are discussed with the Library Director and, if unresolved, the employee has the right to bring the complaint before the Library Board; that during the tenure of the present Library Director, no employee has brought a grievance to the Library Board; that employees have discussed complaints with individual Board members; that the Library Board exercises its autonomous powers to hire, supervise and set forth employee compensation and working conditions; that the Library Board, and not the City, is the employer of Library employees; and that the Library Board was not formally served with notice of hearing in this matter and is not a party hereto.

15. That the three Police Clerks, Donna Schraufnagel, Florence R. Zimmermann and Veronica Nielen, work in the Police Department, which is located in the City Hall; that the Police Department is a self-contained unit and there is little, if any, work interaction between the Police Clerks and non-police department employees; that the Police Clerks perform duties which are not performed by employees represented by the Union, to wit, operating police radio dispatch and teletype equipment, accompanying females to the restroom and accompanying Police Officers who are transporting female prisoners; that Police Clerks do not have the power of arrest; that Police Clerks operate radio dispatch equipment when other Department personnel are unavailable; that the Police Clerk's foregoing duties do not involve a significant amount of the Police Clerk's work time; that Nielen, unlike Zimmermann and Schraufnagel, is primarily occupied with Municipal Court and Fire and Police Commission work, rather than Police Department work; that all of the Police Clerks perform work which is primarily clerical in nature, including the following: processing mail, typing reports, letters and documents, taking and transcribing dictation, indexing and filing records, answering phones, preparing statistical reports, cashiering, and operating office equipment; that Nielen also schedules court cases, takes minutes of meetings, takes notes of testimony, and prepares notices; that Schraufnagel performs Municipal Court work and Fire and Police Commission work when Nielen is unavailable; that the Police Clerks are under the supervision of the Police Chief; that the Municipal Judge supervises Municipal Court activities; that the Police Clerks have access to a de minimis amount of confidential labor relations material affecting employees in the police bargaining units, which units are not represented by the Union; that the Police Clerks receive wages and benefits which are comparable to those received by City Hall clericals represented by the Union; that clerical employees represented by the Union answer phones, maintain records, prepare statistical reports, type, take and transcribe dictation, operate switchboard equipment and office machines, and file records and documents; and that Police Clerks share a community of interest with employees represented by the Union.

16. That the DPW Cost and Records Clerk works in an office located in the City Garage; that the Cost and Records Clerk is supervised by the Director of Public Works, whose office is located in the City Hall, several blocks from the City Garage; that the Cost and Records Clerk maintains the books and records of the Department of Public Works, including personnel records, and prepares the bi-weekly payroll; that individual employees have access to their own personnel file; that during the time the present Cost and Records Clerk has been employed, the City and the Union have bargained one contract involving Union employees; that the Cost and Records Clerk has provided the Director of Public Works and the City's Labor Negotiator with information on the utilization of task rates, driving time and sick leave; that the Director of Public Works and the City's Labor Negotiator utilized the information in the formulation of City bargaining proposals and bargaining strategy; that the Cost and Records Clerk does not attend bargaining sessions and has no responsibility for formulating bargaining proposals or bargaining strategy; that the Cost and Records Clerk does not type bargaining proposals; that the Cost and Records Clerk does not cost or project City wage proposals; that the information on task rates, driving time, and sick leave which was provided to the Director of Public Works and the City's Labor Negotiator is information which is available to employees and the Union; that the Director of Public Works has discussed with the Cost and Records Clerk, the City's bargaining strategy with respect to City proposals on sick leave, and wage rates for two-man collections; that the Cost and Records Clerk's duties do not require that she have

access to either the City's bargaining proposals or bargaining strategy; that the Director of Public Works is the first step in the grievance procedure set forth in the collective bargaining agreement covering employees represented by the Union; that five or six grievances have been filed by DPW employees during the preceding seven or eight year period; that when the Director of Public Works investigates grievances, the Director may request the Cost and Records Clerk to provide him with information contained in her records; that, in addition to the payroll records and personnel records, the Cost and Records Clerk has access to OSHA reports, Worker's Compensation reports, and accident reports; that the information contained in the Cost and Records Clerk's records is not confidential labor relations material; that the Cost and Records Clerk does not prepare or type the Director's grievance response; that the Cost and Records Clerk does not represent the City at any stage in the grievance procedure, nor is she responsible for determining the City's response to the grievance; that the grievant and the Union receive copies of the Director's response to the grievance; that the Cost and Records Clerk's payroll duties involve routine application of the Union's contract, e.g., determining whether overtime or working out of classification provisions are applicable; that when the Cost Clerk is uncertain as to the application of any provision of the contract, she seeks guidance from the DPW Foreman, Assistant Foreman, or Director; that the present Cost Clerk has questioned a directive from the City Clerk's Office which set forth the procedure for calculating backpay and has also asked the Director whether an employee could have access to his personnel file; that ultimate responsibility for contract interpretation, however, resides with the Director of Public Works; that the Cost and Records Clerk has been directed by the Director of Public Works to report use of sick leave to the Director who evaluates the use of sick leave and determines whether there has been employee abuse; that the Cost and Records Clerk is not involved in the determination of whether abuse has occurred or whether disciplinary action is warranted; that use of sick leave is compiled bi-weekly and posted in the employees' lunch room; that the Director of Public Works has directed the Cost and Records Clerk to call "unusual things" to his attention; that the previous Cost and Records Clerk, on two occasions, questioned the veracity of task rate slips turned in by DPW workers; that the present Cost and Records Clerk has not been directed to monitor employee use of task rates for the purpose of detecting abuse; that DPW employees do approach the Cost and Records Clerk and complain about perceived payroll inaccuracies; that the Cost and Records Clerk has authority to prepare a backpay correction if she is persuaded that she has made an error; that the Cost and Records Clerk notifies the Director of Public Works that she has made an adjustment to the payroll; that the Director of Public Works reviews and approves the payroll prepared by the Cost and Records Clerk, as well as sick leave and emergency leave slips which are submitted by employees; that the DPW Cost and Records Clerk prepares summaries of budget account expenditures and balances, which summaries are utilized by the Director of Public Works in the preparation of the Department's budget; and that the type of information to which the Cost and Records Clerk has access in the course of her duties is either information that is also available to the Union or its agents and/or information which does not, itself, constitute the employer's strategy or position in collective bargaining, contract administration, litigation, or similar matters pertaining to labor relations.

17. That, at the time of hearing, the position of Health Clerk was vacant; that the City has stipulated to the fact that the employee occupying the position of Health Clerk is a regular part-time clerical employee; that the Health Clerk works in the Health Department which is located approximately one and one-half blocks from the City Hall; that the Health Clerk's duties do not involve interaction with City Hall employees; that the Deputy Registrar of Vital Statistics, an employee represented by the Union, works in the Health Department; that the Health Clerk assumes the duties of the Deputy Registrar of Vital Statistics when the Deputy Registrar is absent; and that the Health Clerk shares a community of interest with clerical employees represented by the Union.

18. That the Engineering Aide and the Engineering Technician I are supervised by the Director of Public Works, who also supervises DPW employees represented by the Union; that the Engineering Technician I performs the majority of his duties in the field, e.g., inspecting work in progress, surveying, taking field notes, and locating underground facilities; that the Engineering Technician I also performs work in an office located in the City Hall; that the office work includes filing records, updating utility plats and City maps, preparing cost estimates of various projects, checking contractors' bids for correct prices after bid openings, drawing plans for sewer, water and paving under the direction of the City Engineer, computing yearly summaries on DPW work, and providing information

to the public; that the Engineering Aide also performs both field work and office work; that the field work includes use of transit and level, surveying for installation of sewer, water, street lighting or street improvements, and inspection of City projects under construction; that the Engineering Aide's office work includes filing plans and field notes, and assisting in updating sewer and water plats and City maps; that the Engineering Aide and the Engineering Technician I generally work from 8:00 a.m. to 4:30 p.m. and receive a one-half hour lunch period; that employees in the Union who work at the City Hall work from 8:00 a.m. to 5:00 p.m. and receive a one hour lunch period; that during construction season, the Engineering Aide and Engineering Technician I frequently work overtime; that DPW employees represented by the Union also work seasonal overtime, e.g., snow removal; that the 1983 wages of the Engineering Aide were \$8.57 an hour at the top step, a wage comparable to that of the Bookkeeper Key punch Operator, an employee represented by the Union; that the 1983 wage of the Engineering Technician I was \$936.68 bi-weekly, a wage comparable to that received by the Mechanic I, an employee represented by the Union; that the Engineering Technician I and the Engineering Aide receive fringe benefits which are comparable to those received by employees represented by the Union; that DPW workers represented by the Union perform work in the field; and that the Engineering Aide and the Engineering Technician I share a sufficient community of interest with employees represented by the Union to be included in the bargaining unit.

19. That there are no currently unrepresented regular full-time and regular part-time municipal employees of the City occupying positions other than Police Clerk, Health Department Clerk, DPW Cost and Records Clerk, Engineering Aide and Engineering Technician I.

20. That the employees occupying the positions of Police Clerk, Health Department Clerk, DPW Cost and Records Clerk, Engineering Aide, and Engineering Technician I share a community of interest with employees included in the unit represented by the Union.

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

CONCLUSIONS OF LAW

1. That the Library Board, and not the City, is the employer of the Library employees set forth in Finding of Fact 8.

2. That inasmuch as the Library Board was not served with notice of hearing in this matter, and is not a party hereto, it is not appropriate to direct an election among Library employees herein.

3. That the Petition for Mediation-Arbitration referred to in Finding of Fact 12, involving employees represented by the Union does not bar an election among the non-represented employees at issue herein.

4. That the collective bargaining agreement referred to in Finding of Fact 12, between the City and the Union does not bar an election among non-represented employees.

5. That the Union did not waive its right to petition for representation of the Engineering Aide and Engineering Technician I when, in the prior Commission proceeding noted in Finding of Fact 13, it disclaimed interest in representing employees, including the Engineering Aide and Engineering Technician I, whom the Cudahy Technical and Health Services Association sought to include in a unit of professional employees.

6. That all regular full-time and regular part-time municipal employees of the City who are not currently represented for the purposes of collective bargaining, i.e., the occupants of the positions of Police Clerk, Health Department Clerk, DPW Cost and Records Clerk, Engineering Aide and Engineering Technician I, comprise an appropriate voting group for the purpose of determining whether the aforesaid employees wish to be represented for the purposes of collective bargaining.

7. That a question of representation exists among the employees in the voting group described in Conclusion of Law 6.

8. That inasmuch as the employees included in the voting group described in Conclusion of Law 6, share a community of interest with employees included in the bargaining unit of City employees currently represented by the Union, the anti-fragmentation mandate of Sec. 111.70(4)(d)2.a. makes it appropriate that employees in the voting group be merged with the employees in the existing unit represented by the Union in the event that the employees in the voting group select the Union to represent them for the purposes of collective bargaining; and that such merged bargaining unit would constitute an appropriate unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

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 Direction in the voting group set forth in Conclusion of Law 6 among all employees included therein who were employed on August 2, 1984, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees desire to be represented by Milwaukee District Council 48, AFSCME, AFL-CIO, Local 742, for purposes of collective bargaining with the City of Cudahy on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of
Madison, Wisconsin this 2nd day of August, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Chairman

Marshall L. Gratz /s/
Marshall L. Gratz, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

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

Background:

The Union is seeking to become the exclusive representative of employees occupying the positions enumerated in Finding of Fact 8. The means by which the Union seeks to achieve that end--as stated in its petition and related correspondence, statements of position during the hearing, and post-hearing briefs--are not free of ambiguity. One alternative means to that end that is presently available to the Union is that a vote be conducted among the residual group of employees and that said group be merged with the existing voluntarily recognized unit currently represented by the Union if the Union prevails in the balloting. We have, therefore, focused our discussion primarily on that alternative.

The City argues that allowing the Union to achieve a merger of the residual group with the existing unit by any means other than an overall unit vote would defeat the purpose of the Commission's rule against nonconsensual expansion of a voluntarily recognized bargaining unit to include positions in existence at the time of the voluntary recognition. It further argues that an overall unit vote is not an available option herein because the Union has petitioned too late such that its petition is barred by its mediation-arbitration petition or by the contract that has been entered into by the parties as regards the voluntarily recognized unit. It further argues that such an overall unit is not appropriate and should, instead, be treated as two separate units divided along blue and white collar lines.

As noted in Finding of Fact 11, the City has also raised issues concerning the status of the various positions in question herein.

Timeliness:

At the time the Union filed its Petition for Election, a Petition for Mediation-Arbitration involving the employees included in the unit represented by the Union was pending before the Commission. To permit the processing of an election petition which could eliminate the bargaining representative during the pendency of the mediation-arbitration procedure would undermine the integrity of the mediation-arbitration process and adversely affect the stability of collective bargaining. 5/ Consequently, the City is correct in its assertion that it would be inappropriate to conduct an election involving employees represented by the Union. 6/

The unrepresented employees in dispute herein, however, were not a party to the mediation-arbitration petition and are not a party to the existing collective bargaining agreement between the Union and the City. 7/ The mediation-arbitration petition and the contract cannot, therefore, serve to bar an election among the unrepresented employees. With respect to the unrepresented employees, the petition for election is timely filed. 8/

5/ City of Franklin, Dec. No. 19538 (WERC, 4/82); Milwaukee County, Dec. No. 18847 (WERC, 7/81); Dunn County, Dec. No. 17861 (WERC, 6/80).

6/ Consequently, the Commission need not address the City's argument that the existing voluntarily recognized unit is inappropriate and should be severed into two units, clerical and blue collar, respectively.

7/ As the City argues, an existing collective bargaining agreement can, under certain circumstances, bar a petition for election involving employees covered by the agreement.

8/ Although the parties stipulated that it would be appropriate to have each non-represented individual vote separately as to inclusion in the existing unit represented by Local 742, such a procedure does not protect the confidentiality of the ballot. Consequently, the Commission will not be a party to such a procedure.

Voluntary Recognition:

The unit represented by the Union is voluntarily recognized. The Commission previously refused to expand the voluntarily recognized unit through the unit clarification process. 9/ Unlike the prior proceeding, however, the Union is seeking an election among all unrepresented regular full-time and regular part-time employees, commonly referred to as residual employees. Although a residual unit, in some instances, may be found to be a separate appropriate unit for the purposes of collective bargaining, the residual group of employees herein share a community of interest with employees in the voluntarily recognized unit. Consequently, the anti-fragmentation mandate of Sec. 111.70(4)(d)2.a. is best served by merging the residual group of employees with the voluntarily recognized unit, should the residual group choose the Union as its representative. 10/

Waiver:

As the City argues, the Union withdrew its request to intervene in a prior proceeding in which the Cudahy Technical and Health Services Association sought to represent a unit of professional City employees. 11/ Although the Cudahy Technical and Health Services Association sought to include the positions of Engineering Technician I and Engineering Aide in a professional unit, the Commission found that the employees occupying the positions were not professional. Contrary to the assertion of the City, the withdrawal of Union intervention in the prior election proceeding does not waive the right of the Union to seek to represent either the Engineering Technician I or the Engineering Aide herein.

Library Employees:

The Union argues that Library employees have a community of interest with other City employees represented by the Union and, therefore, are appropriately included in the bargaining unit represented by the Union. Specifically, the Union argues that Library employees have skills comparable to those of other unit employees; Library employees, like unit employees, are selected through the Civil Service process, and the City Common Council approves and funds the Library budget. The City, however, asserts that the Library Board is a municipal employer, separate from the City, and, therefore, it is inappropriate to include Library employees within the unit of City employees.

The Library Board was established by a City Ordinance in accordance with the provisions of Chapter 43, Wis. Stats. Members of the Library Board are appointed by the Mayor and confirmed by the Common Council. Although the Library budget is prepared by the Library Board, with the assistance of the Library Director, the City Common Council approves and funds the budget. Once appropriated, the monies are subject to the control of the Library Board. 12/ The Library Board determines the number and kinds of workers to be employed in the Library, as well as their wages, hours and working conditions. 13/ Although the Library Board utilizes the City Civil Service process when recruiting full-time Library employees, the Library Board has final authority with respect to hiring such employees. 14/ Library

9/ City of Cudahy, Dec. No. 19451-A, 19452-A (WERC, 12/82).

10/ Accord, Germantown Education Association, Dec. No. 17494 (WERC, 12/79); Fox Valley Technical Institute Faculty Association, Dec. No. 13204 (WERC, 12/74).

11/ City of Cudahy, Dec. No. 19507 (WERC, 3/82).

12/ The Library budget includes the salary of the Library Custodian, a member of the bargaining unit represented by Local 742. The Library Board does not participate in Local 742 contract negotiations.

13/ With the exception of the custodial employee represented by Local 742.

14/ Part-time employees are not subject to the Civil Service process.

employees are supervised by the Library Director. The Library Board, however, awards promotions and has ultimate authority for resolving employees' grievances. 15/

Sec. 43.58(4), Stats., empowers Library Boards to hire employees and "prescribe their duties and compensation." Since the Library Board exercises autonomous powers to hire, supervise and set forth employee compensation and working conditions, the Commission is satisfied that the Library Board, and not the City, is the employer of the Library employees in dispute herein. 16/ Consequently, it is not appropriate to include the Library employees in a unit which also contains City employees. 17/ Although the Union's Representative at hearing indicated a desire to represent Library employees regardless of whether the City or the Library Board is found to be the employer, the Library Board was not formally served with notice of the hearing in this matter and was not a party thereto. Consequently, the Commission does not deem it appropriate to direct an election among employees of the Library.

Police Clerks:

The City asserts that the three Police Clerks have a community of interest which is separate and distinct from other City employees. Specifically, there is no job interchange or work related contact with other City employees, and the Police Clerks have unique hours, wages and conditions of employment. The City further asserts that the Police Clerks perform work which is substantially different from the work performed by other City employees.

The Police Clerks work in the Police Department, an area contained in the City Hall. As the City argues, the Police Department is a self-contained unit and there is little, if any, work interaction between the Police Clerks and non-police employees. Although the Police Clerks perform duties which are not performed by other City clericals, such duties do not consume a significant amount of the Police Clerks' time. 18/ The vast majority of the Police Clerks' work time is devoted to typing, filing, stenographic transcription, recordkeeping, cashiering, processing mail, answering phones and operating office machines. 19/ Such duties are clerical in nature and require substantially the same skills and abilities as the duties performed by clericals represented by the Union. 20/ The Police Clerks

15/ Promotions are infrequent. Since 1968, one Librarian moved from Librarian I to Librarian II upon receipt of her Master's Degree. There is no formal grievance procedure. Problems are discussed with the Library Director and, if unresolved, the employee has the option of discussing the matter with the Board. During the tenure of the present Director, approximately fifteen years, no employee has brought a grievance to the Board. Employees, however, have discussed matters with individual Board members.

16/ Hales Corners Library Board, Dec. No. 15229-A (WERC, 4/78).

17/ Inasmuch as the City and the Library Board are separate employers, the anti-fragmentation provisions of Sec. 111.70(4)(d)2.a., relied upon by the Union, are not applicable.

18/ The Police Clerks do not have the power of arrest. Their matron-like duties are limited to accompanying females to the restroom and accompanying Police Officers who are transporting female prisoners. When other Department personnel are unavailable, Police Clerks will operate radio dispatch equipment. Police Clerks also operate teletype equipment.

19/ The Commission is aware that the City considers police and court records to contain more sensitive information than that contained in materials processed by other City clericals. With the exception of confidential labor relations material, however, the content of the material processed by clerical employees is not relevant to the determination of whether or not clericals share a community of interest.

20/ Clericals represented by the Union type, file, maintain records, prepare statistical reports, take and transcribe dictation, and operate office equipment.

and clericals represented by the Union work the same hours, receive comparable wages, and work within offices located in the City Hall Complex. Contrary to the assertion of the City, the Police Clerks share a community of interest with employees in the unit represented by the Union.

Cost and Records Clerk:

The Commission has consistently held that in order for an employee to be considered a confidential employee, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purposes it must be the type of information which: 1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and 2) is not information that is available to the bargaining representative or its agents. 21/

The City, contrary to the Union, argues that the Cost and Records Clerk (Cost Clerk) has access to sensitive labor relations material and, consequently, should be excluded from the collective bargaining unit as a confidential employee. 22/ Specifically, the City asserts that the Cost Clerk provides the Director of Public Works with the background information needed to effectively negotiate with the Union and to administer the labor contract, which information is not available to other employees or the Union. The City further alleges that the Cost Clerk is required to report incongruities in payroll records to the Director. Since such reports may result in disciplinary action, the City argues that the duties of the Cost Clerk create a conflict of interest with other bargaining unit employees.

During the time that the present Cost Clerk has been employed, the City and the Union have bargained one contract. The Cost Clerk has provided information on utilization of task rates, driving time, and sick leave to the Director of Public Works (Director) and the City's Labor Negotiator. The City utilized the information in the formulation of proposals and bargaining strategy. The Cost Clerk, however, is able to provide such data without having knowledge of the manner in which the City intends to use the data. 23/ While it may be true that the Union would not have access to the documents which the Cost Clerk prepares for the City, the information contained in the documents is a matter of public record. 24/ The fact that the Cost Clerk knows what data the City has asked her to compile does not render her position confidential within the meaning of MERA. For she need not be apprised of the City's grievance or bargaining strategy or position in order to compile the data needed by the City. 25/

21/ City of Wausau, 14807 (7/76); Sheboygan County Handicapped Children's Education Board, 20217 (1/83); and City of Jefferson Water and Electric Department, 20511 (4/83).

22/ The City agrees that if the Cost Clerk is not confidential, then she shares a community of interest with clerical employees represented by the Union.

23/ The Director is not responsible for developing wage proposals and the Cost Clerk does not cost the City's wage proposals. Furthermore, the Cost Clerk does not develop bargaining proposals, attend bargaining strategy sessions, or type bargaining proposals.

24/ Although the Director believes that access to payroll records is restricted to the individual employee and Union Representative reviewing the employee's own payroll records, the Commission is satisfied that payroll records including data on task rates, driving time, and sick leave abuse, could be obtained by the Union under the provisions of Sec. 19.34, Wis. Stats.

25/ The fact that the Director of Public Works may choose to discuss sensitive labor relations information with the Cost Clerk does not make the Cost Clerk a confidential employee. For example, the Director told the Cost Clerk the City's bargaining strategy with respect to the City's proposal on sick leave and wage rates for two-man collections. In neither instance, however, was that information necessary to the performance of the Cost Clerk's duties.

When investigating grievances, the Director may request the Cost Clerk to provide him with information contained in her records. The information contained in her files, however, is not confidential within the meaning of MERA. 26/ Although the Director may utilize the data to prepare sensitive labor relations material which may not be made available to the Union, the Cost Clerk's duties do not require that she have access to such material. 27/ To be sure, the Cost Clerk will need to be informed of any grievance response which impacts upon her duties. For example, if the grievance results in a change in the computation of overtime, the Cost Clerk will need to know of the change so that she may properly prepare payroll. Since the Union and the grievant receive copies of the Director's response to the grievance, however, the Director's response is not confidential labor relations material. 28/

The Cost Clerk's payroll duties involve routine application of the contract, e.g., determining whether overtime or working out of classification provisions are applicable. When the Cost Clerk is uncertain as to the application of any provision of the contract, she seeks guidance from the DPW Foreman, Assistant Foreman or Director. 29/ Ultimate responsibility for contract interpretation, however, resides with the Director.

The Cost Clerk is also required to report use of sick leave to the Director, who evaluates use of sick leave and determines whether there has been employee abuse. 30/ The Cost Clerk, however, is not involved in the determination of whether abuse has occurred or disciplinary action is warranted. Although the previous Cost Clerk, on two occasions, questioned the veracity of task rate slips turned in by DPW workers, the Cost Clerk is not required to monitor employee use of task rates for the purpose of detecting abuse. Although the Director has told the Cost Clerk to call "unusual things" to his attention, the Commission is satisfied that the Cost Clerk's duties are ministerial in nature and do not create a conflict of interest with other bargaining unit employees sufficient to warrant exclusion from the bargaining unit. 31/ Since any access to sensitive labor

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- 26/ In addition to the payroll records, the Cost Clerk has access to employee personnel files, OSHA reports, Worker's Compensation and accident reports. Since each employee has access to his or her own personnel file, such files are not confidential within the meaning of MERA. The record fails to establish that the OSHA reports, Worker's Compensation records, or accident reports contain sensitive labor relations material.
- 27/ The Cost Clerk does not represent the City at any stage in the grievance procedure, nor is she responsible for determining the City's response to the grievance.
- 28/ The Cost Clerk does not prepare or type the Director's response to the grievance. Her duties, therefore, do not require that she be apprised of the Director's response prior to its release to the Union and the grievant.
- 29/ For example, the present Cost Clerk questioned a directive from the City Clerk's Office which set forth the procedure for paying backpay and also asked the Director whether an employee could have access to his personnel file.
- 30/ Use of sick leave is calculated after every payroll period and posted in the employee lunch room.
- 31/ If the record established that the Cost Clerk devoted a significant portion of her time to sifting through payroll records for the purpose of detecting employee improprieties, such duties would certainly place the Cost Clerk in a conflict of interest situation. The record, however, establishes that the Cost Clerk has not been directed to "search" for abuse, but rather, is expected to report incongruities which come to her attention in the performance of her payroll duties.

relations material is de minimus, the Cost Clerk is not a confidential employee within the meaning of MERA. 32/

Health Department Clerk:

At hearing, the City stipulated to the fact that the employee occupying the position of Health Department Clerk is a regular part-time clerical employee. 33/ The City, however, denies that the Health Department Clerk shares a community of interest with employees represented by the Union.

While it is true that the Health Department is located approximately one and one-half blocks from the City Hall and the Health Clerk's duties do not involve interaction with City Hall employees, the existence of a separate work site does not, per se, warrant the conclusion that employees do not share a community of interest, particularly where, as here, an employee represented by the Union, the Deputy Registrar of Vital Statistics, shares the Health Clerk's work site. 34/ Since the Health Department Clerk performs clerical duties, and is a regular part-time employee, the Commission is satisfied that the Health Clerk shares a community of interest with employees in the bargaining unit represented by the Union. 35/

Engineering Aide and Engineering Technician I:

The City, contrary to the Union, argues that the Engineering Aide and Engineering Technician I lack a community of interest with employees included in the collective bargaining unit represented by the Union. The Engineering Aide and Technician I, however, perform clerical work such as filing and recordkeeping, in an office located in the City Hall, as do clerical employees represented by the Union. The Engineering employees also perform field work, as do blue collar workers represented by the Union. The Engineering employees and DPW employees represented by the Union also have a common supervisor, the Director of Public Works. Furthermore, the wages and hours of the Engineering employees are not significantly different from those of employees represented by the Union. Although the record fails to establish that employees represented by the Union perform work requiring technical skills utilized by the Engineering Aide and Technician I, e.g., inspecting, surveying, and drafting, the Commission is persuaded that the Engineering employees share a sufficient community of interest with employees represented by the Union to be included in the unit.

Conclusion:

The record establishes that the only regular full-time and regular part-time unrepresented City employees who are municipal employees within the meaning of Sec. 111.70(1)(b), occupy the positions of Police Clerk, Health Department Clerk, DPW Cost and Records Clerk, Engineering Aide and Engineering Technician I. 36/ It is, therefore, appropriate to conduct an election among the aforesaid employees to

32/ The Cost Clerk also provides the Director with payroll data which is utilized by the Director to prepare the Department's budget. The record does not establish, however, that her budget duties involve access to confidential labor relations information.

33/ At the time of hearing, however, the position was vacant.

34/ The Health Clerk also assumes the duties of the Deputy Registrar of Vital Statistics when the Deputy Registrar is absent.

35/ There are no other regular part-time employees who are unrepresented. The parties stipulated that John Tomczyk, Inspector, and Thomas Mescaros, Assessor, were irregular part-time employees.

36/ Sec. 111.70(1)(b) excludes independent contractors, supervisors, or confidential, managerial and executive employees from the definition of "municipal employee." As discussed more fully above, Library employees are employees of the Library Board, not the City.

determine whether a majority of those voting wish to be represented for the purpose of collective bargaining. 37/ Since the employees in the residual group share a community of interest with the employees in the bargaining unit represented by the Union, it will best serve the anti-fragmentation mandate of Sec. 111.70(4)(d)2.a. to merge the residual group of City employees with the unit represented by the Union, if a majority of the employees in the residual group voting vote in favor of representation by the Union.

Dated at Madison, Wisconsin this 2nd day of August, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Chairman

Marshall L. Gratz /s/
Marshall L. Gratz, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

37/ The parties both expressed a willingness and/or preference for a procedure whereby each unrepresented municipal employee in dispute would individually determine whether his or her position would be included in the existing unit instead of a secret ballot vote among the residual group turning on the preference of a majority of those eligible and voting. Such a procedure would be inconsistent with the principles of majority rule and of group vote by secret ballot that are provided for in Secs. 111.70(4)(d)1. and 2.b., Stats., respectively. We are, instead, conducting a conventional secret ballot vote among the residual employee group.