

In the Matter of the Petition of
CITY OF GREEN BAY
Involving Certain Employees of
CITY OF GREEN BAY

Case 137
No. 34432 ME-1
Decision No. 22881

Mr. Mark A. Warpinski, Assistant City Attorney, City of Green Bay, Room 300, 100 North Jefferson, Green Bay, Wisconsin 54301, and Mr. Donald Vanderkelen, City of Green Bay Labor Negotiator, appearing on behalf of the City.

Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2785 Whippoorwill Drive, Green Bay, Wisconsin 54304, appearing on behalf of City Hall Employees Union, Local 1672-A, AFSCME, AFL-CIO.

Mr. Glenn Tarkowski, Business Representative, Drivers, Warehouse & Dairy, Employees, Local No. 75, 1546 Main Street, Green Bay, Wisconsin 54302, appearing on behalf of Drivers, Warehouse & Dairy Employees, Local No. 75.

The City of Green Bay, having on December 21, 1984, petitioned the Wisconsin Employment Relations Commission to clarify two existing certified bargaining units so as to exclude the positions of Parts Manager and Assistant Parts Manager from an existing bargaining unit consisting of all employees of the City of Green Bay employed in the "City Hall and associated departments unit" represented by AFSCME, Local 1672-A, and to include them in an existing unit "DPW excluding office and clerical" represented by Drivers, Warehouse and Dairy Employees, Local No. 75; and a hearing having been held on March 18, 1985, in Green Bay, Wisconsin, before Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff; and a stenographic transcript of the proceedings having been prepared and submitted to the Examiner on April 23, 1985; and the parties having submitted briefs and reply briefs by June 4, 1985; and the Commission being fully advised in the premises, makes and issues the following

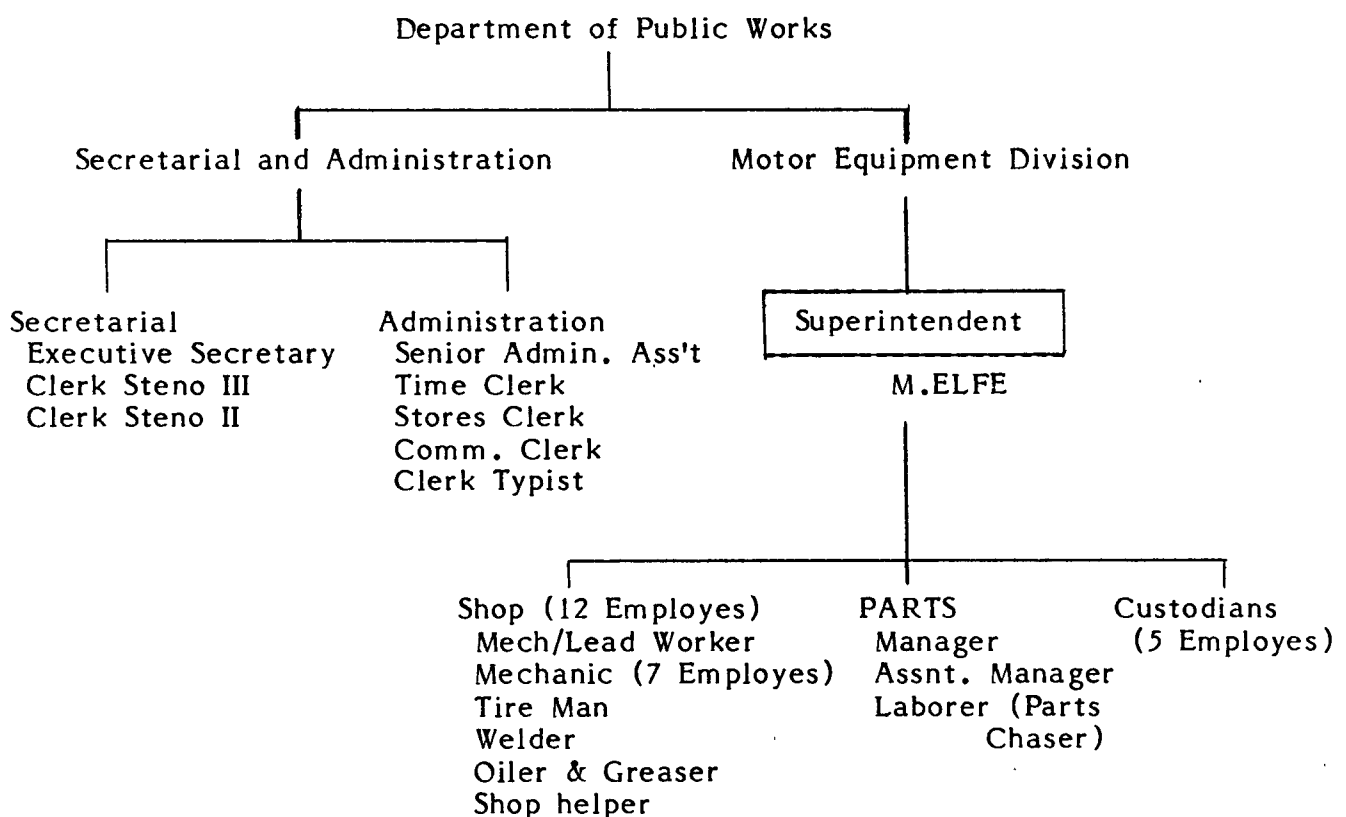
1. That the City of Green Bay, hereinafter referred to as the City, is a municipal employer maintaining its principal offices at 100 North Jefferson, Green Bay, Wisconsin; that among its various governmental functions the City operates a Department of Public Works with the following Divisions: Administration and Secretarial, Motor Equipment, Street, Sanitation, and Sewer.

2. That Green Bay City Hall Employees Union, Local 1672-A, AFSCME, AFL-CIO, affiliated with the Wisconsin Council of County and Municipal Employees, hereinafter referred to as AFSCME, is a labor organization maintaining its principal offices at 2785 Whippoorwill Drive, Green Bay, Wisconsin; and that in City of Green Bay, (City Hall), Dec. No. 8390 (WERC, 3/68), pursuant to a stipulation as to unit and eligibles, the WERC certified AFSCME as representative of all employees of the City of Green Bay employed in the City Hall and associated departments, but excluding registered nurses, case workers, engineers, sanitarians, curators, department heads, elected and appointed officials, supervisors, confidential employees and all other employees, hereinafter referred to as the AFSCME unit.

3. That Drivers, Warehouse and Dairy Employees Union, Local No. 75, hereinafter referred to as the Teamsters, is a labor organization maintaining its principal office at 1546 Main Street, Green Bay, Wisconsin; and, that in City of Green Bay (Dept. of Street and Sanitation), Dec. No. 6041 (WERC, 7/62), WERC certified the Teamsters as the representative of all employees employed in the Department of Public Works in the Street Division, Sanitation Division, and Sewer Division, but excluding shop foreman, street foreman, and supervisors of sewer maintenance, office and clerical employees and executives, hereinafter referred to as the Teamster unit; and that in City of Green Bay, (Dept. of Public Works), Dec. No. 16399-D (WERC, 6/78), WERC again certified Teamsters as the representative of that unit, following another representation election.

4. That the disputed positions of Parts Manager and Assistant Parts Manager existed but were not included in any unit prior to 1968; that in 1968 those positions were included by stipulation in the AFSCME unit of which AFSCME was first certified representative; that since 1969 Leon Halada has occupied the Parts Manager position; that the Assistant Parts Manager position is occupied by Jake Hallada.

5. That in 1975, the City reorganized the Department of Public Works creating two separately-supervised Divisions of Motor Equipment and of Secretarial and Administration, in addition to the Divisions of Streets, Sanitation, and Sewer; that in pertinent part the present organization structure of the DPW is as follows:



and that all of the positions above except those under Secretarial are located at the City's West Side Garage.

6. That on December 21, 1984, the City filed the instant petition requesting the Commission to clarify the above-noted bargaining units by ordering that the Parts Manager and Assistant Parts Manager positions be transferred from the AFSCME bargaining unit to the Teamster bargaining unit; that the City contends that the work location of the two disputed positions is more closely associated with employees represented by the Teamsters, that said two positions share common supervision with employees represented by the Teamsters, that the duties and skills of said two positions are more aligned with the duties and skills of mechanics than with clerical employees, that said two positions share a greater community of interest with mechanics than with clerical employees, and that the present alignment of bargaining units results in staffing and overtime problems when the Parts Manager and Assistant Parts Manager are absent or unavailable to work overtime; that the Teamsters contend that no change is necessary but if any is ordered the Commission should order inclusion of the disputed positions in the Teamster bargaining unit because of the greater community of interest; and that

AFSCME contends the instant petition should be dismissed, that a clarification of the bargaining unit is not a proper procedure for securing a combination of two bargaining units, that the City has failed to demonstrate said two bargaining units are unlawful as presently constituted, that the only question which could be resolved herein by the Commission is in which of the two bargaining units the newly created Parts Laborer position should be placed, that the change sought by the City is a matter of convenience which would have a detrimental effect on other employees represented by AFSCME, that the Commission should not disrupt existing bargaining units on a convenience basis, and that if the Commission rules on the Parts Laborer position, said position should be included in the AFSCME unit.

7. That the duties and responsibilities of the Parts Manager position are as follow:

JOB DESCRIPTION

DEPARTMENT OF PUBLIC WORKS - MOTOR EQUIPMENT DIVISION

I. TITLE

Parts Manager

II. DEFINITION

Parts Department work for the Department of Public Works

III. DUTIES, RESPONSIBILITIES AND WORK PERFORMED

Responsible for the daily operation of the parts rooms and on call 24 hours a day.

Orders all items which make up the inventory of the parts room.

Checks all in-coming shipments and makes final approval for payment of purchase orders.

Maintain inventory cards and conduct physical inventory once a year.

Order all gas, oil, lubricants and antifreeze for the Department of Public Works.

Wait on parts counter and perform other duties as assigned.

IV. KNOWLEDGE, SKILLS AND ABILITIES

Considerable knowledge of automotive and heavy equipment component parts.

Knowledge of inventory and supply procedures.

Working skill in basic office practices.

Ability to maintain a working relationship with fellow employees and deal with vendors in an orderly manor. (sic)

Ability to give written or oral orders.

V. PHYSICAL REQUIREMENTS

Must be in good physical condition and able to pass a standard city physical examination.

Must have no physical defects which would impair work performed or endanger fellow employees.

VI. EXPERIENCE AND TRAINING

Graduation from high school.

Minimum of 2 years experience in parts room procedures or related field.

8. That the duties and responsibilities of the Assistant Parts Manager position are as follows:

JOB DESCRIPTION

DEPARTMENT OF PUBLIC WORKS - MOTOR EQUIPMENT DIVISION

I. TITLE

Assistant Parts Manager

II. DEFINITION

Parts Department work for the Department of Public Works.

III. DUTIES, RESPONSIBILITIES AND WORK PERFORMED

Fill job orders and distribute tools to all divisions.

Receive shipments, stock shelves and balance books for gas and diesel fuel used.

Assist with annual inventory.

Take over for Parts Manager in his absence and remain on call 24 hours a day.

Performs related work as assigned.

IV. KNOWLEDGE, SKILLS AND ABILITIES

Working knowledge of automotive and heavy equipment component parts.

Knowledge of inventory and supply procedures and basic office practices.

Ability to maintain a working relationship with fellow employees and deal with vendors in an orderly manor. (sic)

Ability to follow written and oral orders.

V. PHYSICAL REQUIREMENTS

Must be in good physical condition and be able to pass a standard city physical examination.

Must have no physical defects which would impair work performed or endanger fellow employees.

VI. EXPERIENCE AND TRAINING

Graduation from high school.

Some experience in parts room procedures or related field.

9. That the duties and responsibilities of the Parts Laborer position referred to herein as Parts Chaser, are as follows:

JOB DESCRIPTION

DEPARTMENT OF PUBLIC WORKS - MOTOR EQUIPMENT DIVISION

I. TITLE

Parts Laborer

II. DEFINITION

Parts work for the Department of Public Works - Motor Equipment Division.

III. DUTIES, RESPONSIBILITIES, AND WORK PERFORMED

Obtain parts and materials from vendors or as directed by Parts Manager or Equipment Repair Superintendent.

Work in parts stockroom and issue parts as required.

Assist with shipments and stocking of shelves.

Relieve Parts Manager or Assistant Parts Manager as required.

Performs related work as required or assigned.

IV. KNOWLEDGE, SKILLS AND ABILITIES

Working knowledge of automotive and heavy equipment component parts.

Knowledge of city street and vendor location.

Working skill in basic office procedures, including record keeping.

Ability to maintain a working relationship with fellow employees and deal with vendors in an orderly manner.

Ability to follow written or oral instructions.

V. PHYSICAL REQUIREMENTS

Must be in good physical condition and be able to pass a standard City physical examination.

Must have no physical defects which would impair work performed or endanger fellow employees.

VI. EXPERIENCE AND TRAINING

Graduation from high school or equivalent.

Must have current Wisconsin driver's license;

10. That since 1963 the "parts chaser" function had been performed by one or more Laborers in the Teamsters unit; that for several years one particular Laborer performed that function on a regular basis until his retirement in November of 1984; that on January 17, 1985, the City posted a Parts Laborer position which was bid for and filled by Teamster bargaining unit employee Dave Van Dorn; that although that was the first formal posting for a "Parts Laborer", it was to fill a vacancy in what had, over the years, become a specialized Laborer position within the Teamster unit, rather than the creation of an altogether new position.

11. That the City maintains its inventory of parts in several rooms on the first and second floor of its West Side Garage; that the Parts Manager and Assistant Parts Manager work primarily on the first floor of the West Side Garage in a room which is adjacent to the Shop area where the City's mechanics work; that said inventory is maintained under a limited access security system with only the Superintendent of the Motor Equipment Division, Maynard Elfe, the Parts Manager

and Assistant Parts Manager having keys to said rooms; that the majority of overtime in the Parts Section is performed by the Parts Manager or the Assistant Parts Manager; that when clerical employees perform overtime in the Parts Section they receive keys for the parts rooms from the Parts Manager; that on several occasions when clerical employees have been assigned to work overtime in the Parts Section they have been unable to locate requested parts and have had to allow a mechanic into the parts rooms to assist them in locating the requested part; that since 1969 clerical employees have assisted the Parts Manager and Assistant Parts Manager in annual inventories; and that the Parts Chaser has never performed overtime in the Parts Section other than to operate the vehicles assigned to the Parts Chaser.

12. That the City does not permit the Parts Manager or Assistant Parts Manager to take vacation at the same time; that in the absence of either the Parts Manager or Assistant Parts Manager during normal work hours, the Parts Chaser replaces the Parts Manager or Assistant Parts Manager and the Parts Chaser position is filled by an employee from the Teamster bargaining unit; and that neither the Teamsters nor AFSCME have ever grieved the Part Chaser's fill-in for either the Parts Manager or Assistant Parts Manager.

13. That the normal hours and work week of the Parts Manager, Assistant Parts Manager and Parts Chaser positions is 7:00 a.m. to 3:00 p.m., Monday through Friday; that the normal hours and work week of the mechanic positions is 7:00 a.m. to 3:00 p.m., Monday through Friday except for a position referred to by the parties as the Night Man; that said Night Man's normal hours and work week is 2:00 p.m. to 10:00 p.m., Monday through Friday; that clerical employees in the City garage have a normal work week of Monday through Friday and have staggered eight (8) hour work shifts between 7:00 a.m. and 4:30 p.m.

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

CONCLUSIONS OF LAW

1. That the positions of the Parts Manager and Assistant Parts Manager have been and remain "clerical" within the meaning of the exclusion of "office and clerical employees" from the Teamsters unit;

2. That said positions therefore appropriately remain excluded from the above-noted Teamsters unit and appropriately included in the above-noted AFSCME unit.

Based upon the above and foregoing Findings of Fact and Conclusions of Law the Commission makes and issues the following

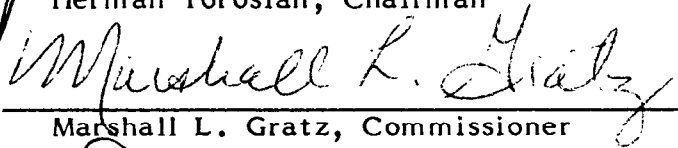
ORDER CLARIFYING BARGAINING UNIT

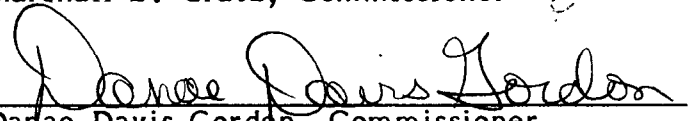
That the petition filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 6th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

 _____
Marshall L. Gratz, Commissioner

 _____
Danae Davis Gordon, Commissioner

1/ See Footnote 1 on Page 7

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

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

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

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(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. 227.20 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.

CITY OF GREEN BAY

MEMORANDUM ACCOMPANYING FINDINGS OF
FACTS CONCLUSIONS OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

In its petition, the City seeks a clarification order to the effect that the Parts Manager and Assistant Parts Manager positions should be excluded from an existing certified bargaining unit represented by AFSCME and included in an existing certified bargaining unit represented by the Teamsters.

The background facts and positions of the parties are as stated in the Findings of Fact and need not be repeated here.

Controlling in our view are the facts that the two positions at issue have existed since the original certification of the Teamster bargaining unit in 1962, were excluded from that unit (presumably because the City and Teamsters considered them clerical) and were made a part of the AFSCME unit when it was created in 1968.

There is no indication that the duties of the disputed positions have become materially less "clerical" over the years since the original exclusion of these positions from the Teamsters unit in 1962. The DPW reorganization, which itself took place some 10 years ago, has also not been shown to have materially affected the duties of the positions or, therefore, to have rendered them any less "clerical" in nature. While that reorganization altered the supervision and organizational placement of the positions, the duties and skills mix has not been shown to have been changed.

The disputed positions have been and continue to be a mix of clerical and non-clerical duties and skills. Positions with similar duties have been characterized as clerical in at least some other settings. 2/ Continuation of the agreed-upon and historical treatment of these positions as clerical is therefore not so clearly inappropriate as to do a substantial injustice to the incumbent employees involved.

Given the foregoing, and especially in view of the absence of a material change in circumstances affecting the clerical vs non-clerical nature of the duties and skills of the positions 3/, we conclude that there is no basis in the instant record for granting the City's request to move them to the Teamster unit.

While we are therefore dismissing the petition, we wish to make it clear that this decision addresses only the question of bargaining unit assignment for the two positions at issue. It is not a determination of questions as to the propriety or impropriety of training or assigning or offering overtime to employees in either bargaining unit in any given set of circumstances. We encourage the City and the Unions to discuss any operational concerns they may have in an effort to resolve any problems that any of them may be experiencing or anticipate in those respects.

The Parts Laborer ("Parts Chaser") position occupied by Van Dorn is not the subject of the instant clarification petition, and hence we have not entered conclusions of law concerning it. Had it been, we note that the bulk of the duties involved in that position are non-clerical in nature and that the continued inclusion of that position in the Teamster unit would appear to us to be appropriate based on the instant record.

2/ See, Fond du Lac County (Highway Department), Dec. No. 7677-A (WERC, 3/85).

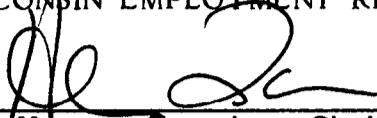
3/ Regarding changed circumstances, see, Mid-State VTAE, Dec. No. 14526-A (WERC, 5/85) at 10.

For the foregoing reasons we have dismissed the County's Petition for Unit Clarification filed herein.

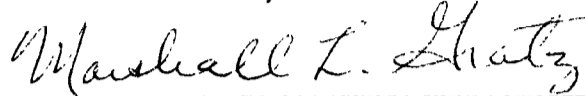
Dated at Madison, Wisconsin this 6th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

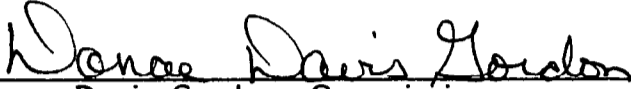
By



Herman Torosian, Chairman



Marshall L. Gratz, Commissioner



Danae Davis Gordon, Commissioner