

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 MILWAUKEE DISTRICT COUNCIL 48, :
 AFSCME, AFL-CIO :
 :
 Involving Certain Employees of :
 :
 CITY OF SOUTH MILWAUKEE :
 :

Case 46
 No. 34893 ME-17
 Decision No. 23083

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

On April 10, 1985, the above-named Petitioner filed a petition with the Wisconsin Employment Relations Commission, requesting the Commission to clarify an existing bargaining unit of Public Works, Sewer and Water Department, Library, City Hall, Health Department and Police Department employes of the above-named Employer by including in that unit nine employes in two different classifications; that the parties subsequently entered into discussions concerning the petition, following which a stipulation of fact and waiver of hearing was filed jointly on October 14, 1985; and that upon the basis of the parties' stipulation, the Commission now makes and issues the following

FINDINGS OF FACT

1. That the City of South Milwaukee is a municipal employer within the meaning of the Municipal Employment Relations Act (MERA), and the Petitioner is a labor organization within the meaning of the said Act.

2. That the Petitioner currently represents employes of the City of South Milwaukee in a collective bargaining unit certified by the Wisconsin Employment Relations Commission which unit includes all regular laborers, truck drivers, equipment operators, mechanics, custodians, Clerks I, II and III, Library Assistants I, II and III, Sewer and Water Department employes, including clericals, and Engineering Technicians I, II and III; that such unit includes employes in the Department of Public Works, Sewer and Water Department, Library, City Hall, Health Department, and Police Department; and that the above-described bargaining unit consists of approximately 62-70 employes, including approximately two (2) custodians and approximately eight (8) clerical employes.

3. That by the instant petition, the Petitioner seeks to accrete three (3) "Cleaning Lady" positions (City Hall) and six "Public Safety Officer" positions (Police Department) into the above described existing collective bargaining unit represented by the Petitioner.

4. That each of the three (3) incumbent "Cleaning Ladies" perform general cleaning work in the City Hall, on an approximately 10-hour weekly scheduled basis; that their cleaning duties include general cleaning and are substantially the same as the duties performed by the cleaner in the Library who also works on an approximately 20-hour weekly schedule basis and is in the said existing bargaining unit; and that the duties of the "Cleaning Ladies" also overlap those of the full-time custodial position in the City Hall.

5. That the parties stipulate that the said "Cleaning Ladies" have a community of interest with the said custodial and other employes within the existing collective bargaining unit.

6. That the incumbents in the six (6) "Public Safety Officer" positions perform dispatch and regular clerical duties on an approximately 20-hour weekly schedule basis in the Police Department; and that they are not uniformed, nor do they have law enforcement powers, but their duties are essentially clerical in nature.

7. That the duties of the said "Public Safety Officers" overlap the identical duties performed by the approximately two (2) or (3) full-time clerical employes in the Police Department who are in the said existing collective bargaining unit.

8. That the parties stipulate that the "Public Safety Officers" have a community of interest with the said full-time Police Department clericals as well as other employes in the existing collective bargaining unit.

Based on the above Findings of Fact, the Commission issues the following

CONCLUSION OF LAW

The six "Public Safety Officers" and three "Cleaning Ladies" employed by the employer share a community of interest with the employes in the bargaining unit described in Finding of Fact 2 above, and are appropriately included in that unit within the meaning of Sec. 111.70(4)(d)(2)(a) and (c), Stats.

Based on the above Findings of Fact and Conclusion of Law, the Commission issues the following

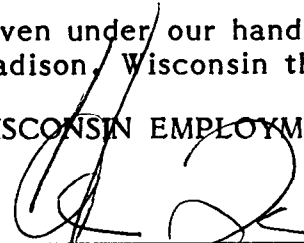
ORDER CLARIFYING BARGAINING UNIT 1/

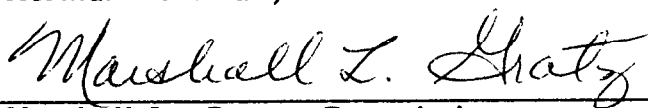
That the bargaining unit described in Finding of Fact 2 above and represented by Petitioner is clarified as including the positions of "Public Safety Officer" and "Cleaning Lady".

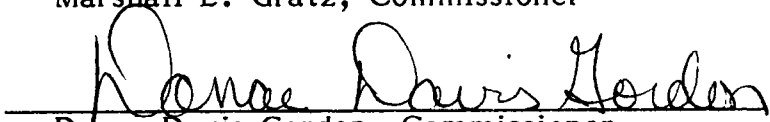
Given under our hands and seal at the City of
Madison, Wisconsin this 26th day of November, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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

(Footnote 1 continued on Page 3)

(Footnote 1 continued)

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 SOUTH MILWAUKEE

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

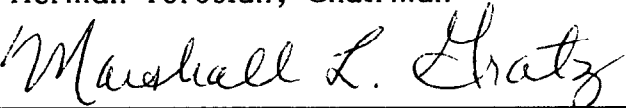
The stipulation of facts filed in this matter is adopted as the Commission's Findings of Fact, and is self-explanatory. It is sufficient to say that on the basis of the record presented by the parties jointly, the part-time employees involved in this petition are regular employees and their duties are clearly similar to duties of other regular part-time employees as well as to certain full-time classifications already within the bargaining unit, and this similarity is recognized by both parties. Given the similarities in duties to employees already within the bargaining unit described in Finding of Fact 2, we find it appropriate to accrete the disputed positions to the same bargaining unit. 2/

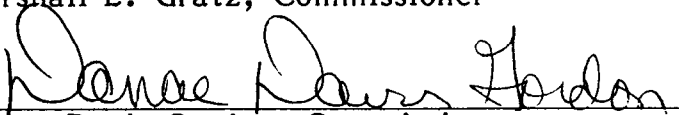
Dated at Madison, Wisconsin this 26th day of November, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

2/ Neither party contends that an election is necessary.