

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
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CITY OF MARINETTE (WATER AND WASTE WATER UTILITIES)	:	
	:	Case 39
Involving Certain Employes of	:	No. 36398 ME-2545
	:	Decision No. 24353
	:	
CITY OF MARINETTE (WATER AND WASTE WATER UTILITIES)	:	
	:	
	:	

Appearances:

- Mr. James A. Morrison, Morrison & Coggins, S.C., 2042 Maple Avenue, P. O. Box 406, Marinette, Wisconsin, 54143, appearing on behalf of the petitioning Utilities.
- Mr. Guido Cecchini, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Box 676, Rhinelander, Wisconsin, 54501, appearing on behalf of Local Union No. 260.
- Mr. Richard V. Graylow, Lawton & Cates, Attorneys at Law, 214 W. Mifflin Street, Madison, WI 53703-2594, appearing on the brief on behalf of Local Union No. 260.
- Mr. Howard Smale, Business Agent, Teamsters Chauffeurs and Helpers' Union, P. O. Box 605, Escanaba, Michigan, 49827, appearing on behalf of Local Union No. 328.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DISMISSING PETITION

City of Marinette Water and Waste Water Utilities 1/ having on January 21, 1986 filed a joint petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act in a claimed appropriate unit of all employes of the City of Marinette Water Utility and the Marinette Waste Water Treatment Commission; and hearing on the matter having been held April 2, 1986 before Examiner Sharon Gallagher Dobish; and post-hearing briefs having been received by June 2, 1986 and stipulated documentary evidence having been received by August 4, 1986; and the Commission having considered the evidence, arguments and briefs of the parties and being fully advised in the premises hereby issues the following

FINDINGS OF FACT

1. That the City of Marinette Water Utility, hereinafter referred to as the Utility, was created approximately 100 years ago by the City of Marinette as a separate municipal corporation wholly owned by the City; that the Utility is a separate municipal employer which at the time of this hearing employed the following individuals:

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|------------------------|------------------------------|
| Myril A. Brix Jr. | Backhoe Operator |
| Roger R. Forsberg | Meter Reader & Maintenance |
| Henry W. Keller | Outside Foreman/Utility |
| Patrick E. Kitzinger | Chief Operator |
| Francis J. Lebick | Foreman: Maintenance/Utility |
| Kip E. Martin | Assistant Utility Man |
| James O. Nyquist | Assistant Utility Man |
| Girard P. Rudell | Operator |
| Daniel G. Uecke | Outside Maintenance |
| Ronald H. Vanlerberghe | Operator |
| Jerome Walters | Operator |

1/ It appears from the record that the correct names of the two entities filing the petition are the City of Marinette Water Utility and the Marinette Waste Water Treatment Commission.

that said employes are represented for the purposes of collective bargaining by Teamsters Union Local No. 328; that during the 1985 collective bargaining agreement between the Teamsters and the Utility the individuals in the above classifications were paid between \$10.01 and \$9.50 per hour; and that the Utility has its offices and physical plant at 501 Water Street, Marinette, Wisconsin.

2. That the City of Marinette, herein the City, is a separate municipal employer; that approximately 32 City employes are represented for the purposes of collective bargaining by Wisconsin Council 40, AFSCME, AFL-CIO, Local 260, herein Local 260, in the following unit:

All employees of the Employer employed in the Department of Public Works, Park Department and Cemetery, excluding only the superintendent, city engineer, draftsman, clerical and office employees, Recreation Department employees and director of Parks and Recreation.

that the following six employes are regularly assigned to work at the Marinette Waste Water Treatment Commission:

David Witak	- Chief Operator
Richard Dubord	- Assistant Operator
Larry Schultz	- Lift Station Maintenance
Eugene McElroy	- Lift Station Maintenance
Mike Schwerzler	- Collection System Maintenance
Glenn Terrell	- Collection System Maintenance

that other City workers from the DPW are available on a daily basis to help manage and maintain the waste water collection system; that two of the six City workers regularly assigned to the Waste Water Treatment Commission, Schwerzler and Tenell, could be transferred by the City to other work although this has never happened; that the remaining four City employes, Witak, Dubord, Schultz and McElroy, are not available for transfer by the City away from Waste Water operations due to the nature of the work they perform; that during the 1984-85 collective bargaining agreement the above classifications were paid between \$9.88 and \$9.06 per hour while other City employes were paid between \$10.34 and \$7.40 per hour; and that other job classifications under the Local 260 contract include the following: Street Foreman, Chief Mechanic, Skilled Mechanic, Blacktop Plant Operator, Assistant Blacktop Plant Operator, Blacktop Crew Leader, Heavy Equipment Operator, Light Equipment Operator, Rakers, Driver - Truck (Sanitation), Driver - Truck (Street), Mechanic Helper, Refuse Loader, Assistant Foreman (Park), and Common Laborer.

3. That the Marinette Waste Water Treatment Commission, hereafter referred to as the Waste Water Commission, was considered a department of the City of Marinette until 1983 when the City Council passed the following ordinance, amended in 1984, creating the Waste Water Commission:

5.01(a) The Marinette Waste Water Treatment Commission (the "Commission") shall be responsible for the collection and treatment of all waste water in, or coming into, the City of Marinette, and subject to the general control and supervision of the Common Council of the City of Marinette, shall take entire charge and management of any waste water collection and treatment facilities and shall supervise the operations thereof.

(b) The Commission shall consist of seven Commissioners who shall be appointed by a majority of the members of the Common Council for a term beginning on the first day of October, of as many years as there are commissioners, except that the terms of the commissioners first appointed shall expire successively on each year on each succeeding first day of October; provided, however, that the first year of service for each commissioner first elected shall be a partial year from the day of election until the next October 1st. Members of the Common Council who are members of the Board of Public Works shall be eligible for appointment to the Commission and only one such member shall serve on the Commission; if the

Common Council member appointed to the Commission ceases to be a member of the Common Council or the Board of Public Works, he or she shall also cease to be a commissioner and the Common Council shall forthwith elect a qualified successor to the Commission for the unexpired term.

(c) The Commission shall meet and organize within 30 days after the appointment of the original commissioners and shall choose from among their number a president and secretary, and shall meet thereafter as it deems necessary. The Common Council may by motion fix the compensation to be received by the commissioners for attending meetings and may, from time to time, change the amount of said compensation. The Commission shall make rules for its own proceedings and for the administration and government of its affairs and facilities, and shall have general powers in the construction, extension, improvement and operation of any waste water treatment and collection facilities; provided, however, that any construction, extension or improvement of said facilities shall be submitted for approval to the Board of Public Works and approved by the Common Council.

(d) The Commission shall appoint a manager of the waste water treatment facilities and may engage and hire employees necessary for the operation of any such facilities and fix their compensation.

(e) Commencing January 1, 1984, the Commission shall keep books of account in the manner and form prescribed as appropriate for its operation by the auditors for the City. The income and expenses of the Commission shall be audited annually by the auditors for the City.

(f) The income of the Commission shall first be used to meet operation, maintenance, depreciation, interest and any sinking fund requirements, and other necessary disbursements or indebtedness. Income in excess of these requirements may be used to purchase and hold interest bearing bonds issued for the acquisition of any treatment and collection facilities, to establish a reserve for any purpose deemed necessary by the Commission, or may be paid to the general fund of the City.

and that the Waste Water Commission has its offices at 501 Water Street and its physical plant at 1614 Ely Street, Marinette, Wisconsin.

4. That the Water Utility and the Waste Water Commission initiated the instant proceeding by filing a joint petition requesting the Wisconsin Employment Relations Commission to conduct an election in a unit consisting of both Utility and Waste Water Commission employees; and that during the proceedings the Water Utility and Waste Water Commission also requested, in the alternative, that a separate bargaining unit of Commission employees be created.

5. That the City of Marinette was notified of the instant proceeding on the date of hearing; that City Attorney Schwaba appeared at the hearing and stated that the City had no objection to the petition or to the possibility that the WERC may find a separate Waste Water Commission bargaining unit appropriate; and that the City did not thereafter participate in the instant proceedings.

6. That during hearing, Local 260 moved to dismiss the petition on the grounds that: (1) the Waste Water Commission is not a separate municipal employer and thus may not file such an election petition; (2) to find a separate Waste Water unit of City employees appropriate would violate the anti-fragmentation policies of the Municipal Employment Relations Act; and (3) the petition was not accompanied by a showing of interest and was untimely filed.

7. That the Teamsters took the position at hearing that they neither opposed nor endorsed the election petition and were only interested in maintaining the integrity of their Water Utility unit.

8. That the Water Utility is controlled and operated by the Water Board which has a seven member Board of Directors who are appointed by the Mayor with Common Council approval to serve staggered terms; that traditionally, all seven of the Water Board members are also appointed by the Mayor and approved by the Common Council to serve as Commissioners of the Waste Water Commission to serve staggered terms; that one of the current Water Board/Waste Water Commissioners is an Alderman; that the two Utilities have separate meetings and maintain separate minutes and separate records; that each employs a separate bookkeeper and keep separate books although the City requires that both employ the City's auditor; that both the Waste Water Commission and the Water Utility adopt their own budgets with City approval; that the Waste Water Treatment Plant is located at 1603 Ely Street in the City of Marinette and that the City owns this property; that the Water Treatment plant and the offices of both the Water Utility and Waste Water Commission are located at 501 Water Street in the City of Marinette and the Water Utility owns this property; that there are no common work sites for blue collar employes of Water Utility and those City employes assigned to the Waste Water Commission; that the Water Utility and Waste Water Commission have one Director, Nancy Mann who directs the activity of all employes of both entities and who is paid by both entities for her services; that the Water Utility and Waste Water Commission share one other employe, Christa Ingram-Kromholz, laboratory supervisor, who is an employe of the Water Utility but is compensated by each entity for the services rendered; that Ms. Ingram-Kromholz' duties involve testing drinking water and waste water for bacteria and/or chemical content to meet various governmental regulations; that in emergency situations employes of the Water Utility are utilized by the City or the Waste Water Commission and in such circumstances, the cost of all equipment and personnel used (including fringe benefits) is paid by the Waste Water Commission or the City to the Water Utility; that the Water Utility fees for customer service are set by the Public Service Commission (PSC) in a process whereby the Water Utility requests rate increases, if needed, and the City Council approves the rate increase requests before they are submitted to the PSC; that the Waste Water Commission is regulated by the Department of Natural Resources and the Environmental Protection Agency; that the City must approve Waste Water Commission and Water Utility recommendations for the financing of capitol projects or improvements such as the extension of sewer or water mains which would require a City assessment; that in these instances the City has routinely approved the Waste Water Commission's and the Water Utility's recommendations; that all Waste Water Commission revenues are collected through customer user fees which are set by the Waste Water Commission and are not considered or approved by the City Council; that the City pays for both waste water and for water services it receives from the Waste Water Commission and the Water Utility at the same rates as are charged to all other customers; that neither the Waste Water Commission nor the Water Utility receives any revenues from City taxes; that both the Waste Water Commission and the Water Board are separate named insureds on the City's liability insurance policy and each reimburses the City for their share of the premiums; that Worker's Compensation insurance is paid for by the City but is billed back to both the Water Utility and Waste Water Commission; that each pay for their own Unemployment Compensation coverage; that the City prepares Waste Water Commission and the Water Utility payrolls and issues City of Marinette payroll checks; that the City does not charge for this payroll service but the Water Utility and Waste Water Commission reimburse the City for the amount of the payroll from their own revenues.

9. That the Water Utility solely determines the number of employes it will employ; that the Water Utility Board members and Director Mann are solely responsible for negotiating and ratifying the wages, hours and conditions of employment applicable to Water Utility employes represented by the Teamsters and for responding to all Water Utility employe grievances; that Director Mann interviewed, gave an examination to and recommended that the Water Utility hire Ms. Ingram-Kromholz, the laboratory supervisor, and has, on her own authority, discharged one Water Utility employe whose discharge the Water Board sustained and concerning which discharge the City had no authority to and did not act to review her decision; that Director Mann has also hired two part-time Water Utility employes on her own authority; that Director Mann does not believe she has the authority to hire, fire or discipline Waste Water Commission employes; that the Director has never hired, disciplined or discharged any Waste Water employes; that aside from Director Mann the Waste Water Commission has not had occasion to hire any employes since its reorganization in 1982; that neither the Waste Water Commission nor Director Mann have been involved in any collective bargaining or in any grievance processing with Local 260 as to the City employes assigned to the Commission; that the City responds to all grievances filed by employes assigned to

the Waste Water Commission without seeking Waste Water Commission input; that when the Waste Water Commission needs additional City employes for sewage work, said employes work in City streets, not at the Waste Water Treatment Plant and the Waste Water Commission reimburses the City for all wage and benefits of the employes used; that on occasion when two City employes assigned to Waste Water Commission are transferred by the City, neither Director Mann nor the Waste Water Commission has any power to overrule or circumvent the transfer and the replacements for these employes are selected on the basis of seniority according to Local 260's contract with the City; that the Director has required that full-time employes of the Water Utility be tested for general knowledge of biology, chemistry and simple math; and that the Director has never tested any Waste Water employes.

10. That while Water Utility employes must be licensed by the PSC and City employes assigned to the Waste Water Commission must be licensed by the DNR, other City employes generally do not need to be licensed; that Water Utility and Waste Water Commission positions generally require greater knowledge and skill than do other City jobs, although there are no job descriptions extant for Water Utility and Waste Water Commission employes and there are no formal educational or technical requirements for job applicants; and that unlike most other City employes, employes of the Water Utility and City employes assigned to the Waste Water Commission are expected to have a basic knowledge of biology, chemistry, electricity, hydraulics and mechanics.

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

CONCLUSIONS OF LAW

1. That the City of Marinette is the municipal employer within the meaning of Sec. 111.70(1)(j), Stats., of the municipal employes who are assigned to the Marinette Waste Water Treatment Commission.

2. That the City of Marinette Water Utility is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats.

3. That the Marinette Waste Water Treatment Commission is not a municipal employer within the meaning of Sec. 111.70(1)(j), Stats.

4. That a collective bargaining unit which would combine City of Marinette employes assigned to the Marinette Waste Water Treatment Commission with City of Marinette Water Utility employes would be inappropriate for the purposes of collective bargaining.

5. That the instant petition does not raise a question of representation.

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

ORDER

That the election petition filed herein is dismissed. 2/

Given under our hands and seal at the City of
Madison, Wisconsin this 26th day of March, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld /s/
Stephen Schoenfeld, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

2/ See Footnote 2 on Page 6.

2/ 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.

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 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. 227.49, 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.

CITY OF MARINETTE (WATER AND WASTE WATER UTILITIES)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
DISMISSING PETITION FOR ELECTION

BACKGROUND

The instant petition seeks an election in either a separate bargaining unit of alleged Waste Water Commission employes or a combined unit of Waste Water Commission and Water Utility employes. Currently the individuals performing services for the Waste Water Commission are in a unit of City of Marinette employes represented by AFSCME, Local 260 while the Water Utility employes are in a unit represented by the Teamsters.

POSITIONS OF THE PARTIES

The petitioning parties assert the following factors favor a separate Waste Water unit: (1) the Waste Water Commission is a separate legal entity created by ordinance in 1982; (2) the Waste Water Commission gains all of its revenues from user fees and gets no money from the City coffers; (3) the Waste Water Commission is controlled by a separate Commission which notices and conducts separate meetings and keeps separate minutes and separate books and records for the Waste Water Commission; (4) the Waste Water Commission reimburses the City for the full cost of City personnel and equipment used by the Waste Water Commission; (5) the City pays the Waste Water Commission for all waste water services at the same rate as other City customers; (6) the Waste Water Commission participates in the Wisconsin Retirement System and in City insurance (health, liability) programs for which the Waste Water Commission is billed by the City for its portion of these payments or premiums; (7) the Water Utility owns its own physical plant which is separate from that of the Waste Water Commission physical plant which is owned by the City; and (8) Water Board and Waste Water Commission employes have no common worksites (with the exception stated below).

The Petitioners argue that WERC precedent such as City of Waukesha (Parks Department), Dec. No. 21032 (WERC, 10/83) supports their contentions that the Waste Water Commission is a separate legal entity from the City, and that cases such as City of Madison (Water Utility), Dec. No. 19584 (WERC, 5/82) are inapplicable to this case.

In the alternative, the petitioning parties argue that the following factors support one collective bargaining unit composed of Waste Water Commission and Water Utility employes: (1) the Water Utility is controlled by a Water Board whose seven members are the same seven people who serve as the Waste Water Commissioners, and the Water Board members are appointed in the same manner as Waste Water Commissioners -- by the Mayor with approval of the City Council -- to identical though staggered terms of office; (2) like the Waste Water Commission, the Water Utility derives its revenues solely from user fees which it sets with City Council (and PSC) approval; (3) the Water Utility and Waste Water Commission have one common Director who supervises all Water Utility and Waste Water Commission employes and share one employe, the laboratory supervisor; (4) both the Director and laboratory supervisor are paid by each entity for the time spent working for the Utility and Commission; (5) the Waste Water Commission and Water Utility share common administrative offices at the Water Utility physical plant; (6) like the Waste Water Commission, the Water Utility participates in and reimburses the City for all payroll check costs, retirement costs and insurance costs of its employes and of the Water Utility itself; and (8) as with the Waste Water Commission the City pays the Water Utility for services at the same rates as other users. In this regard, the petitioning parties also contend that Water Utility and Waste Water Commission share a sufficient community of interest distinct from other City employes because (1) they possess similar skills, training and job functions which are distinct from those of City employes; (2) both Water Utility and Waste Water Commission employes must be licensed unlike City employes; and (3) Waste Water Commission and Water Utility employes must have knowledge of basic biology and chemistry, unlike City employes.

Finally, the Utility and the Commission state that certain other factors support the removal of Waste Water employes from the existing City unit and outweigh the Commission's anti-fragmentation policy. These factors are: (1) Local

260's contracts with the City do not allow the Waste Water Board to control the assignment of two of its employees which come to it from the Department of Public Works; (2) the Waste Water Commission may not negotiate contracts covering its employees or settle its employees' grievances under Local 260's contracts; and (3) job openings at the Waste Water Commission must be filled on the basis of seniority and a trial period for interested Local 260 unit employees who post for openings, rather than on the basis of qualifications as the Waste Water Commission would prefer.

The Teamsters argue that the Water Utility is a separate employer and assert that they do not seek to have Waste Water employees placed in the existing Teamster Water Utility unit nor would they want to represent Waste Water employees in a separate unit.

Local 260 argues that the election petition should be dismissed. Local 260 points out that the petition here was not filed within the 60 day period prior to the expired contract's reopener date; that the Petitioners have not filed any showing of interest with their petition; and that there is no question concerning representation here since Local 260 represents and has represented the employees in question for many years. In addition, Local 260 asserts that any election herein is barred by its current contract with the City until the appropriate "window period" prior to the December 31, 1988 expiration of that contract. In addition, Local 260 asserts that the Waste Water Commission is not a separate municipal employer within the meaning of Section 111.70(1)(j). In this regard Local 260 contends that the Waste Water Commission derives its power from the City of Marinette, not the State of Wisconsin. Therefore, the Waste Water Commission is not a political subdivision of the State. In further support of these contentions, Local 260 asserts that as statutes do not authorize the Waste Water Commission to exercise autonomous powers, the Commission's decision in the City of Waukesha (Parks Department), Dec. No. 21034 (WERC, 11/83) is distinguishable.

Local 260 also asserts that the Petitioners have not submitted any evidence of problems or prejudice they have suffered due to Waste Water employees being included in the Local 260 unit. Therefore, Local 260 contends there is no need to separate Waste Water employees from the Local 260 unit. Thus, Local 260 asserts that the statutory anti-fragmentation policy should outweigh the Waste Water employees' interest in having an independent bargaining unit. Local 260 also argues that Waste Water employees share a community of interest with other Local 260 bargaining unit employees. Therefore, Local 260 seeks dismissal of the petition.

DISCUSSION:

Section 111.70(1)(j), Stats., defines a municipal employer as ". . . any city, county, village, town, metropolitan sewerage district, school district, or any other political subdivision of the state which engages the services of an employe. . . ." (emphasis added) Interpreting this statutory provision, the Commission has found various municipal power and water districts which are separate legal entities under the statutes to be separate municipal employers where the record demonstrates that said power and/or water utilities retained operational control over the budgetary and labor relations functions. 3/ Here there is no dispute over the Water Utility's existence as a municipal employer with status as a separate legal entity under Sec. 196.01(5), Stats., and operational control of budgetary and labor relations functions. However, there is a substantial dispute as to the municipal employer status of the Waste Water Commission. When resolving this dispute, we note that the status of the Waste Water Commission as a statutorily independent legal entity is not definitively established in this record. The ordinance creating the Commission does not reference any statutory authority nor has the Commission directed our attention to any statutes authorizing a Waste Water Treatment Commission. Moreover, assuming arguendo that the Commission is a separate statutory entity, the record does definitively establish that the Marinette Waste Water Treatment Commission does not possess operational control over labor relations functions. The record

3/ City of Sparta Water Utility, Dec. No. 12912 (WERC, 8/74); City of Milton, Dec. No. 13400 (WERC, 2/75); Princeton Utility Commission, Dec. No. 15574 (WERC, 6/77); Village of Footville, Dec. No. 21322 (WERC, 1/84).

demonstrates that the City has retained virtually complete control over all labor relations matters relative to the Waste Water Commission. The City negotiates all collective bargaining agreements, it sets all job classifications, it responds to and/or settles all grievances, and it has the power to hire and discipline employees assigned to the Waste Water Commission. Two of the six DPW employees who regularly work at the Waste Water Commission can be transferred out of the Waste Water Commission by City supervision over the objections of Waste Water Commission supervision. Temporary and permanent replacements for Waste Water Commission employees must be sought from the City. Permanent job openings for positions at the Waste Water Commission must be offered to interested, senior City employees on a trial basis before outside applicants can be considered.

The record also demonstrates that the City has retained relatively greater control over the revenue and facilities of the Commission than is the case with the Water Utility.

Thus, given the foregoing, it is clear that the Waste Water Commission is not a municipal employer and that the City of Marinette is the municipal employer of the individuals who perform services for the Waste Water Treatment Commission.

Because the Waste Water Treatment Commission is not a municipal employer under Sec. 111.70(1)(j), Stats., we must dismiss the portion of the petition which sought a separate unit of Commission employees. As to the alternative of combining the City employees who perform services for the Commission with Water Utility employees, we deem a unit which seeks to merge the employees of two separate municipal employers to be inappropriate for the purposes of collective bargaining. 4/ Thus we have also dismissed this portion of the joint petition.

For the guidance of the parties herein, including the City, and in the interest of economy of administrative resources, we would further note that given the statutory mandate regarding avoidance of undue fragmentation of units, the relative community of interest between City DPW employees and those City employees assigned to the Commission, 5/ and the small number of employees performing Commission work, we would not find a separate City unit of those City employees assigned to the Waste Water Commission to be appropriate.

Dated at Madison, Wisconsin this 26th day of March, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld, /s/
Stephen Schoenfeld, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

4/ Milton, supra; Footville, supra; City of Waukesha, Dec. No. 21034 (WERC, 10/83).

5/ The record here indicates that the employees assigned to the Waste Water Commission have wages, hours, fringe benefits and working conditions similar to other City employees; that the City issues payroll checks for Waste Water Commission employees as well as other Local 260 employees; that Waste Water Commission employees and other Local 260 employees share City streets as their common worksite; that job titles, functions and skills of Waste Water Commission employees and Local 260 unit employees are substantially similar; that Waste Water Commission employees who can be transferred by supervisors share common supervision with certain DPW employees in this regard; and that temporary as well as permanent replacements for Waste Water Commission "regulars" must be sought initially from among the City's DPW's employees.