

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
INTERNATIONAL BROTHERHOOD OF :
ELECTRICAL WORKERS, LOCAL :
UNION 2150 :
Involving Certain Employees of :
CITY OF ELKHORN :
(LIGHT & WATER COMMISSION) :
- - - - -

Case 9
No. 38196 ME-2670
Decision No. 24790

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Mr. Scott D. Seldon, 788 North Jefferson, P.O. Box 92099, Milwaukee, Wisconsin 53202 on behalf of the International Brotherhood of Electrical Workers, Local Union 2150.
Sweet & Leece, Attorneys at Law, by Mr. Ward D. Phillips, 114 North Church Street, P.O. Box 383, Elkhorn, Wisconsin 53121 on behalf of the City of Elkhorn.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND CONTINGENT DIRECTION OF ELECTION

International Brotherhood of Electrical Workers, Local Union 2150, having on January 22, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act, in a claimed appropriate unit consisting of all employees of the Elkhorn Light and Water Commission but excluding supervisors and other union-represented employees, to determine whether said employees desire to be represented for the purpose of collective bargaining by the Petitioner; and hearing having been held on April 2, 1987, in Elkhorn, Wisconsin, before Examiner Mary Jo Schiavoni, a member of the Commission's staff; and a transcript of said hearing having been received on April 13, 1987; and the parties having filed briefs on May 1, and June 5, 1987; and the Commission, having considered the entire record, and being fully advised in the premises herein, hereby issues the following

FINDINGS OF FACT

1. That the City of Elkhorn, hereinafter the City, is a municipal employer, with offices located at P.O. Box 586, Elkhorn, Wisconsin 53121.
2. That International Brotherhood of Electrical Workers, Local Union 2150, hereinafter the Union, is a labor organization with offices located at 6227 West Greenfield Avenue, West Allis, Wisconsin 53214.
3. That on January 22, 1987, the Union petitioned for a unit consisting of 11 nonprofessional employees of the Elkhorn Light and Water Commission, eight of whom are blue collar employees currently employed by the City in the electric and water divisions of the Department of Public Works and three of whom are white collar employees currently employed in the Municipal Office Building as clerical employees.
4. That prior to April 21, 1987, an Elkhorn Light and Water Commission existed which exercised substantial control and direction over the employees who are the subject of the instant petition; that in August of 1986, the City adopted an organizational chart with the intent of merging the functions of the City and the Light and Water Commission by placing the City Administrator on the Light and Water Commission as a Commissioner and by the hiring of a Public Works Director to oversee all public works functions including water, electric, parks, sewer, streets divisions and janitorial services; that such changes were implemented in February of 1987 along with changes in the physical set-up of City facilities, including work locations for many of the petitioned-for employees; that on April 21, 1987, the Light and Water Commission was abolished by municipal ordinance; that a Light and Water Advisory Board has been established to advise

the Light and Water Committee of the City Council; that all of the petitioned-for employees are now under the direction and control of the City Administrator; that the three petitioned-for clerical employees are now located in the Municipal Office Building and report directly to the Finance Director; that the other eight petitioned-for employees report to the Public Works Director along with eight other employees employed in the streets, parks, sewer and janitorial services divisions of the Department of Public Works; and that all of these employees, with the exception of the water employees who report to the water treatment plant, now report for work at the City Garage.

5. That eight blue collar employees employed in the streets, parks, sewer and janitorial services divisions of the Department of Public Works of the City of Elkhorn are currently included in a bargaining unit represented by Local 1925 of the Wisconsin Council of State, County and Municipal Employees, AFSCME.

6. That the noncraft collective bargaining unit sought by the Union does not include the following positions which would be included in a residual noncraft, nonprofessional unit of City of Elkhorn employees if the incumbents are not professional, supervisory, confidential, managerial, casual or temporary employees, and if the City of Elkhorn is their municipal employer within the meaning of Sec. 111.70(1)(j), Stats.:

- Deputy Clerk - Treasurer
- City Clerk - Treasurer
- City Engineer
- City Engineer Aide
- City Forester
- Health Officer
- Secretary to Police Chief
- Library Worker (4 individuals)
- Librarian

7. That the City opposes the petitioned-for bargaining unit on a number of grounds, specifically claiming that the petitioned-for employees do not constitute an appropriate collective bargaining unit; that the City argues that the formation of such a unit would unduly fragment the Public Works Department; that the City also argues that the inclusion of the three white collar clerical employees is inappropriate because they do not share a community of interest with the blue collar Public Works Department employees; and that the City further contends that the petitioned-for group contains four craft employees who are entitled to their own unit determination vote in the event that an election is directed.

8. That, contrary to the City, the Union argues that the petitioned-for unit is appropriate and maintains that all of the petitioned-for employees do share a community of interest; that the Union agrees that four of the petitioned-for employees are "craft employees" and has no objection to the establishment of a separate voting group for said employees upon direction of the election.

9. That the City, contrary to the Union, maintains that one of the four craft positions, the Working Line Foreman, and another position in the Water Department, the Chief Instrument Technician, are supervisory in nature.

10. That the City also contends, contrary to the Union, that one of the three petitioned-for clericals, Katie Larson, who is one of two individuals holding the position of Billing and Bookkeeping Clerk, is a confidential employee.

11. That prior to the elimination of the Light and Water Commission, all three of the clericals worked in a separate office under the then Accounting Supervisor Lyle Peterson; that with the elimination of the Light and Water Commission and the merger into the Department of Public Works, the three clerical employees, two Billing and Bookkeeping Clerks and a Cashier, have been placed under supervision of Peterson who currently functions as Finance Director for the City; that the Billing and Bookkeeping Clerks and the Cashier have been physically relocated into a central City Hall Office Building along with two other clerical employees of the City, the City Administrator's Secretary and the Deputy City Clerk Treasurer, who are both designated as confidential employees; that the Cashier's main responsibility is the accurate receiving, recording and prompt depositing of all funds received by the City for electric and water services in the course of business; that the Billing and Bookkeeping Clerks are responsible for the complete

billing system with respect to both light and water bills; that they process daily receipt stubs, meter book readings, consumer name and meter maintenance reports and final accounts receivable prior to and after billing; that they are responsible for the complete billing process, and also work with the Finance Director to secure information for the Public Service Commission; that the Billing and Bookkeeping Clerks handle customer complaints and requests, maintain budget payment and deferred payment customer records, prepare disconnect notices and tags, maintain credit and collection procedures including collection letters, submission of accounts to collection agencies, obtaining judgments, utilizing garnishee procedures, etc.; that they also perform certain secretarial duties such as maintaining word processing and master meter card files and typing letters for the Public Works Director or Finance Director; that they perform certain bookkeeping duties such as posting the labor distribution ledger, a vacation and sick leave book, preparing year to date production reports and assisting in the preparation of a number of other documents; that the Billing and Bookkeeping Clerks take messages for both the light and water employees and also receive meter readings from the meter readers; and that should meter reading errors be discovered they would bring them to the attention of the Public Works Director.

12. That in addition to the duties set forth in Finding of Fact 11 above, one of the Billing and Bookkeeping Clerks, Katie Larson, had been performing certain secretarial duties on behalf of the Light and Water Commission which consisted of typing disciplinary actions with respect to members of the proposed bargaining unit and typing agendas and minutes for Light and Water Commission meetings which may include wage and/or individual employee proposals with respect to working conditions being considered by the Commission; that inasmuch as the Light and Water Commission has been abolished, it is uncertain as to whether Larson will retain any of the above duties; that of the five clerical employees currently employed by the City, the City Administrator's Secretary and the Deputy Clerk already perform confidential duties such as the preparation of agendas and minutes for the executive sessions of various council committees as well as typing disciplinary actions, personnel file matters and bargaining proposals for bargaining with the currently existing bargaining unit; that the performance of duties of a confidential nature by Larson in the future is purely speculative; and that although she may have taken minutes and prepared agendas in the past, her exposure to confidential labor relations material in the future may well be de minimis because there are two other confidential employees available to perform the work of this nature.

13. That Mike Lange is the Working Line Foreman; that his job description is as follows:

Nature of Work

This (sic) a skilled and supervisory position in the construction, maintenance and repair of the municipal distribution system.

This position is responsible for supervising and participating in the activities of a crew of skilled electrical workers engaged in the construction, repair and maintenance of overhead and underground power lines and appurtenant facilities and equipment. The work includes the operation of trucks and attached line equipment. Requires considerable responsibility for; interpreting and instructing personnel on existing methods and procedures relative to distribution line construction, maintenance and repair problems; gathering and preparing time and material reports and maintaining a safe work environment. The work requires considerable physical effort and manual dexterity with exposure to inclement weather and serious accident hazards.

Examples of Duties

Lays out work, assigns and supervises subordinate personnel engaged in construction, installation, maintenance, and repair of high and low voltage, overhead and underground distribution lines and appurtenances.

Supervises the inspection of switchgear, transformers and other auxiliary electrical equipment for proper operation and conditions.

Supervises the installation, maintenance and repair of street lighting systems; setting of poles, anchors and guys and the trimming of trees and branches in the close proximity of energized lines.

Supervises the inspection and patrolling of distribution lines for deficiencies and proper clearance of right-of-way obstructions.

Prepares labor and material cost estimates for various work projects; orders materials and supplies and assumes same conform to applicable specifications and standards.

Assumes that all safety precautions, tools and protective devices are used in conformance with current safety laws and regulations.

Supervises operation of line equipment, backhoes, power saws and related equipment.

Maintains operating records and prepares periodic reports.

Perform lineman duties when required.

Assists in the development and advancement of subordinates through training and effective use of apprenticeship program.

Performs other utility related work that may be required.

DESIRABLE EDUCATION AND EXPERIENCE

Graduation from high school, completion of a linemen's apprenticeship program or equivalent and at least 4 years experience of journeyman level experience in the construction, maintenance and repair of electric distribution systems or an equivalent combination of training and experience.

LICENSES/CERTIFICATIONS

Requires valid state motor vehicle operators license and Wisconsin certification as a journeyman lineman.

that Lange works in a crew along with a Journeyman Lineman and two Apprentice Linemen; that Lange, a long-time employee since May of 1972, receives an hourly wage of \$12.95 per hour, about \$3.00 an hour more than the Journeyman Lineman; that Lange and his immediate supervisor, Gary Hislop, the Director of Public Works, discuss the general parameters of the projects that need to be done, and then Lange makes assignments of a routine nature within the parameters; that Lange spends the majority of his time performing work that is similar or slightly more complex in nature to that performed by the other three employees subordinate to him; that Lange consults with Hislop two or three times daily with respect to assignments that are not routine in nature; that Lange possesses the authority to counsel or verbally admonish employees in his crew for inadequate performance but

14. That Marty Doebert is the Chief Instrument Technician; that the job description of the Chief Instrument Technician is as follows:

Nature of work - This is skilled work in the installation, repair, and testing of electric and water meters and instruments. Work involves responsibility in the installation, testing and repair of residential, commercial, and industrial electric and water meters and instruments. Work is performed with considerable independence within established policies, procedures, and technical guidelines, and is reviewed by an administrative superior through conference and reports. Work includes electrical wiring, as needed. Work assignments are normally determined by requested for new service, customer complaints and meter readers, and periodic schedules for testing meters, devices, instruments.

EXAMPLES OF WORK

Tests, cleans, repairs, recalibrates, and rebuilds residential, commercial, and industrial electric meters and instruments. Tests and seals customers electric meters, installs new or repaired meters; checks for poor wiring or overloaded meters. Performs meter installation wiring for industrial meters including current transformers and potential transformers for polyphase metering. Wires, as needed, and maintains electrical wiring at various utility locations. Investigates customer complaints and conducts voltage and amperage tests to determine defect; reads industrial meters. Installs or removes water and electrical meters as may be required. Supervises the maintenance, repair and operation of the water distribution system. Maintains inventory of electric meters, parts, supplies, and materials. Prepares and maintains necessary records and reports. Performs related work as required.

DESIRABLE KNOWLEDGE, ABILITIES, AND SKILLS

Extensive knowledge of the installation, testing and repair of single and three phase electric meters. Knowledge of the methods and techniques of electrical wiring. Through knowledge of possible defects and faults in electrical wiring, and of the stages of electrical construction when such faults and defects are most readily ascertained and remedied.

Through knowledge of the occupational hazards and necessary safety precautions. Ability to plan, install, test and repair single and three phase electric meters and instruments. Ability to understand and work from construction plans, blueprints, drawings and wiring diagrams. Ability to establish and maintain effective working relationships with superiors, contractors, other employees and the public. Ability to communicate effectively, orally and in writing. Skill in operation of electric meter and instrument testing.

DESIRABLE EDUCATION AND EXPERIENCE

Graduation from high school; and extensive experience in the installation, testing and repair of electric and water meters, or any equivalent combination of education and experience providing the knowledge, abilities, and skill listed above.

that Doebert normally works in a crew with two other employees; a Meter Reader and Utility Serviceman; that in emergencies, he also works with the Waste Water Plant Operator; that Doebert, an employee since 1949, has many years of experience in his position and is paid at a rate of \$10.65 per hour which is substantially higher than the Meter Reader and Utility Serviceman receive but ten cents less than the Waste Water Plant Operator receives; that Doebert spends the vast majority of his time performing work similar to that performed by the other three employees subordinate to him; that Doebert possesses the authority to counsel or verbally

admonish members of his crew for inadequate performance but does not possess the authority to issue a written warning or more severe forms of discipline; that although he has not done so, he can recommend such discipline to his immediate supervisor, Hislop, who would make an independent judgment as to whether discipline was warranted; that Doebert does not possess the authority to hire but it is anticipated that he will participate in a hiring committee along with the Director of Public Works and City Administrator should vacancies arise in the future; that it is also anticipated that Doebert will evaluate the performance of the employees in the future, but to date, he has not done so; that Doebert makes general meter reading assignments of a routine nature but that the Meter Readers operate on their routes independently; that Doebert consults with Hislop daily on assignments that are not routine in nature; that Doebert is primarily responsible for directing the routine work activities of his crew; and that Doebert does not presently exercise supervisory responsibility in sufficient combination and degree so as to make him a supervisory employee.

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

CONCLUSIONS OF LAW

1. That a collective bargaining unit of the blue and white collar employees formerly employed under the Elkhorn Light and Water Commission would cause undue fragmentation and thus does not constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That a voting group consisting of all regular full-time and regular part-time electrical craft employees in the employ of the City of Elkhorn, excluding elected officials, supervisors, executive, managerial, casual and confidential employees would constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. That a voting group consisting of all regular full-time and regular part-time nonprofessional employees currently not included in another bargaining unit conditionally excluding craft employees, and excluding elected officials, supervisors, executive, managerial, casual and confidential employees would constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. Stats.

4. That the voting groups described in Conclusions of Law 2 and 3 would constitute a single appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats., if combined pursuant to the conditions set forth in the Direction of Election.

5. That a question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., presently exists among employees of the City of Elkhorn in the voting group described in Conclusions of Law 2.

6. That the individual occupying the position of Working Line Foreman is not a "supervisor" within the meaning of Sec. 111.70(1)(o)1, Stats., and, therefore, is a municipal employee appropriately included in the craft voting group.

7. That the individual occupying the position of Chief Instrument Technician is not a "supervisor" within the meaning of Sec. 111.70(1)(o)1, Stats., and, therefore, is a municipal employee appropriately included in the residual nonprofessional, noncraft voting group.

8. That the individual occupying one of the positions of Billing and Bookkeeping Clerk, Katie Larson, is not a "confidential employee," and is therefore a municipal employee within the meaning of Sec. 111.70(1)(j), Stats.; and therefore, is appropriately included in the residual nonprofessional, noncraft voting group.

That 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

If International Brotherhood of Electrical Workers, Local 2150 advises the Commission within thirty (30) days of the date of this Direction that it wishes to proceed to an election in the nonprofessional residual unit (Voting Group 2), IT IS HEREBY DIRECTED that elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission in the following voting groups:

Voting Group No. 1

All regular full-time and regular part-time electrical craft employees employed by the City of Elkhorn, excluding elected officials, supervisors, executive, managerial, confidential and casual employees who were employed on August 19, 1987, except such employees as may prior to this election quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of employees in said voting group desire to be included in the same bargaining unit with the residual non-craft employee group described as Voting Group 2 below; (2) whether, if a majority of the employees in the Voting Group 1 vote for inclusion in a unit with the non-craft Voting Group 2, those employees desire to be represented by the International Brotherhood of Electrical Workers, Local Union 2150 for the purposes of collective bargaining with the City of Elkhorn on questions of wages, hours and conditions of employment, or to be unrepresented; and (3) whether, if a majority of the employees in the Voting Group 1 vote for representation in a separate craft bargaining unit, those employees desire to be represented by the International Brotherhood of Electrical Workers, Local Union 2150 for the purposes of collective bargaining with the City of Elkhorn on questions of wages, hours and conditions of employment, or to be unrepresented.

Voting Group No. 2

All regular full-time and regular part-time nonprofessional employees currently employed by the City of Elkhorn and not included in another bargaining unit, excluding craft employees, elected officials, supervisors, executive, manager, casual and confidential employees except such employees as may prior to the election quit or be discharged for cause, for the purposes of determining whether a majority of the employees in said voting group desire to be represented by the International Brotherhood of Electrical Workers, Local Union 2150 for the purposes of collective bargaining with the City of Elkhorn on questions of wages, hours, and conditions of employment, or to be unrepresented.

If Local Union 2150 advises the Commission that it does not wish to proceed to an election in the nonprofessional residual unit, IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission in the following voting group:

All regular full-time and regular part-time electrical craft employees employed by the City of Elkhorn, excluding elected officials, supervisors, executive, managerial, confidential and casual employees who were employed on August 19, 1987, except such employees as may prior to this election quit their employment or be discharged for cause, for the purpose of determining whether those employees desire to be represented by the International Brotherhood of Electrical Workers, Local Union 2150 for the purposes of collective

bargaining with the City of Elkhorn on questions of wages, hours and conditions of employment, or to be unrepresented.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of August, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

CITY OF ELKHORN

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

POSITIONS OF THE PARTIES

City

The City argues that a unit consisting of unrepresented employees in the Light and Water Departments is inappropriate because it results resulting in undue fragmentation and thus is contrary to the statute. Pointing to the fact that it already bargains with AFSCME with respect to half of the employees in its newly organized Department of Public Works, it claims that a Commission direction of election in yet another Department of Public Works bargaining unit would create a "divided house." It stresses that the same fragmentation would occur should the three clerical positions petitioned-for be included in the proposed unit.

While conceding that there are four craft employees, one of which the City also claims is supervisory, the City requests a separate voting group for these employees should an election be directed. The craft position which the City claims to be supervisory is that of Working Line Foreman.

The City also maintains that one Water Department employee position, the Chief Instrument Technician, is supervisory.

In addition to the above claims, the City also contends that one of the Billing and Bookkeeping Clerks, Katie Larson, is a confidential employee.

Union

The Union argues that the petitioned-for unit is an appropriate departmental unit. It maintains that neither the Working Line Foreman nor the Chief Instrument Technician position are supervisory. The Union further denies that the Billing and Bookkeeping Clerk, Katie Larson is a confidential employee and argues that she should be included in the bargaining unit. With respect to the electrical Lineman, the Union agrees that all four are craft employees and entitled to a separate voting group.

DISCUSSION

While there may have been a question as to whether the Light and Water Commission was a separate municipal employer prior to April 21, 1987, it is evident from the post-hearing evidence that the Commission no longer exists and all of the employees formerly employed in the Light and Water Commission have been merged into the City's Department of Public Works. Accordingly, the record fully supports the conclusion that the City is now the sole municipal employer and the petitioned-for employees are appropriately treated as City employees for representation purposes.

To establish the blue collar/white collar "departmental" unit sought by the Union herein would be to create a situation in which a small municipal employer would be potentially confronted with a blue collar/white collar unit of employees formerly working under the Light and Water Commission, and a blue collar/white collar unit of employees in certain of the positions listed in Finding of Fact 6. We conclude that the unit sought by the Union herein is inappropriate because it runs afoul of the mandate in Sec. 111.70(4)(d)2.a. that "The Commission . . . shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force." While it is true that the statute authorizes the Commission to establish departmental units, the unit sought by the Union herein is no longer departmental given the City's reorganization and would, even if departmental, still likely be inappropriate as causing undue fragmentation. We also note that the City of

Jefferson (Water and Electric Department) 1/ decision cited by the Union herein involved a unit where the "department" was a separate municipal employer and thus this decision is not supportive of the Union's position.

Where, as here, a portion of a small municipal employer's workforce is already included in an existing bargaining unit, a residual unit consisting of all remaining unrepresented blue collar/white collar employees is appropriate for the purposes of collective bargaining because, although such a blue collar/white collar mix of employees may not have a strong community of interest due to dissimilar duties, skills and conditions of employment, such a unit honors both the statutory mandate against undue fragmentation and the bargaining history evidence as to the existing separate AFSCME unit both of which we consider when making "appropriate" unit determinations. 2/ While it is clear that the unit sought by the Union herein is not a residual unit, the number of employees listed in Findings of Fact 6 who are in fact eligible for inclusion in a residual unit may be small in number if the library workers are employed by a Library Board and if other employees are excluded as professional, temporary or casual, confidential or supervisory. Thus it may be that numerically the former Light and Water Commission employees will constitute a substantial majority of the employees in the residual unit. Under such circumstances, both economy of administrative resources and fairness warrant giving the Union the opportunity expressed in the Direction to advise us as to whether they wish to proceed to an election in the residual unit. If we are so advised within thirty days, we will, if necessary, conduct further hearing to resolve any eligibility disputes and proceed to conduct the election. Based upon such a contingency we have resolved those eligibility questions which the parties have already litigated. 3/

Confidential Status of Billing and Bookkeeping 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/ Decision No. 11039 (WERC, 6/72).

2/ These factors are:

1. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
2. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
3. Whether the employees in the unit sought have a separate or common supervision with all other employees.
4. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
5. Whether the Unit sought will result in undue fragmentation of bargaining units.
6. Bargaining history.

3/ See City of Madison, Dec. No. 19584 (WERC, 5/82). Because the parties have stipulated that the electric Linemen are craft employees within the meaning of Sec. 111.70(1)(d), Stats., said employees are entitled under Sec. 111.70(4)(d)2.a., Stats., to vote on whether they desire a separate unit or inclusion in the residual nonprofessional unit. The ballot provides the craft employees these options if Local 2150 wishes to proceed to an election in the residual unit.

- 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 which is available to the bargaining representative or its agents. 4/

The City asserts that Katie Larson, one of two Billing and Bookkeeping Clerks is a confidential employee because she performed clerical tasks relating to labor relations for the now - defunct Light and Water Commission. There is no evidence that she will continue to perform such duties at this time given the reorganization and the ready availability of two additional confidential secretaries in the same work area. Accordingly, there is no basis for concluding that Larson is a confidential employee.

Supervisory Status of Working Line Foreman and Chief Instrument Technician

In determining whether a position is supervisory in nature, the Commission has consistently considered the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees;
7. The amount of independent judgement exercised in the supervision of employees. 5/

The Commission has also held that not all of the above factors need to be present, but if a sufficient number of those factors appear in any given case, they will find an employee to be a supervisor. 6/

The City, contrary to the Union, claims that Lange, the Working Line Foreman, is a supervisory employee. The facts set forth in the Findings of Fact demonstrate that Lange fails to possess responsibilities or authority in sufficient combination or degree so as to warrant the conclusion that he is a supervisor. Rather, Lange is primarily responsible for the work activities of the linemen crew with minimal supervisory responsibilities.

The City also argues, again contrary to the Union, that Doeber, the Chief Instrument Technician, is a supervisor. Doeber's responsibilities and authority as they relate to the water crew are identical to those of Lange. Moreover, as

4/ Menomonee Falls School District, Dec. No. 13492-A (WERC, 10/85); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

5/ Door County, Dec. No. 20020 (WERC, 10/82); Laona School District, Dec. No. 22825 (WERC, 8/85).

6/ Dodge County, Dec. No. 18076-A (WERC, 3/83).

with Lange, the Findings of Fact reveal that Doeberst also does not possess responsibility or authority in sufficient combination or degree to warrant a conclusion that he is a supervisory employee. Rather he, like Lange, is primarily responsible for the work activities of the water crew with minimal supervisory responsibilities.

Dated at Madison, Wisconsin this 19th day of August, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner