

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of a Petition of	:	
	:	
WISCONSIN COUNCIL 40,	:	
AFSCME, AFL-CIO	:	Case 33
	:	No 37932 ME-2657
Involving Certain Employes of	:	Decision No. 24798
	:	
CITY OF WATERTOWN	:	
(WASTE WATER TREATMENT PLANT)	:	
	:	

Appearances:

- Mr. Jack Bernfeld and Mr. Thomas Larsen, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of the Petitioner.
- Mr. Roger E. Walsh, Lindner & Marsack, S.C., Attorneys at Law, 700 North Water Street, Milwaukee, Wisconsin 53202, appearing on behalf of the City.
- Ms. Marianne Goldstein Robbins, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson, Room 600, P.O. Box 92099, Milwaukee, Wisconsin 53202, on behalf of the Intervenor, Teamsters Local Union No. 695.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

Wisconsin Council 40, AFSCME, AFL-CIO, hereafter Petitioner, having on December 4, 1986, filed a petition requesting that the Wisconsin Employment Relations Commission conduct an election pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act in a claimed appropriate unit of "all regular full-time and regular part-time employees employed at the Waste Water Treatment Plant"; an initial hearing on the petition having been held before Hearing Examiner Sharon Gallagher Dobish on February 4, 1987, at which the Petitioner indicated that it intended to amend its petition to include an alternative unit or units; and at the February 4th hearing, both the City and the Intervenor, Teamsters Local No. 695, having objected to proceeding with the hearing on that day on the grounds that they were not prepared to present evidence regarding any alternative unit or units; and the Hearing Examiner then having heard arguments on the objection and granted a postponement of the hearing; and Petitioner then having formally filed its amended petition herein on February 10, 1987; and the amended petition having sought an election in the Waste Water Treatment Plant unit as in the original petition or, in the alternative, in a unit consisting of "all regular full-time and regular part-time employees of the City of Watertown, excluding employees in the Fire Department, sworn employees in the Police Department, "blue collar" employees in the Street, Parks and Sanitation Departments, and managerial, professional, supervisory, craft and confidential employees"; and hearing then having been rescheduled and held on March 20, 1987; and a transcript having been made of the proceedings and received on April 10, 1987; and post-hearing briefs including the City's reply brief having then been received by May 22, 1987; 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 Watertown, hereafter the City, is a municipal employer and has its offices at 106 Jones Street, Watertown, Wisconsin 53094.
2. That Wisconsin Council 40, AFSCME, AFL-CIO, hereafter Petitioner, is a labor organization with offices at 5 Odana Court, Madison, Wisconsin 53719.
3. That Teamsters Union Local No. 695, hereafter Teamsters or Intervenor, by letter dated December 19, 1986 notified the Commission that it wished to intervene in these proceedings; that Teamsters were then notified of and appeared at the February 4, 1987 hearing herein and formally intervened herein; and that

Teamsters is a labor organization with offices located at 1314 N. Stoughton Road, Madison, Wisconsin.

4. That the Petitioner seeks an election in a unit consisting only of Waste Water Treatment Plant employes, or, if such a unit is found inappropriate, in a residual unit consisting of Waste Water Treatment Plant employes and all other currently unrepresented City employes; that the alternative residual unit petitioned for would include both unrepresented white collar and unrepresented blue collar employes; that the Teamsters, who currently represent City DPW blue collar employes in a certified unit, take the position that neither petitioned-for unit would be appropriate and that the unrepresented blue collar City employes should appropriately be allowed to vote in an election whether they wish to be represented by the Teamsters or whether they wish no representation; that the City essentially takes the same position as the Teamsters take herein; and that the City also asserts that since neither the Petitioner nor the Teamsters is interested in a residual unit which does not contain Waste Water Treatment Plant employes, the petition should be dismissed and an "accretion" election conducted.

5. That the DPW is organized pursuant to Sec. 2.05 of the Municipal Code, as follows:

2.05 DEPARTMENT OF PUBLIC WORKS. (Rep. & Rec. #72-64) The Department of Public Works shall be under the supervision of the City Engineer who shall be responsible for the planning, construction and managing of the streets, utilities and physical properties of the City except as otherwise provided by law or ordinance. He shall perform the functions and duties of the Board of Public Works designated in sec. 62.14, Wis. Stats., and whenever the statute or ordinance refers to functions or duties of the Board of Public Works such duties or functions shall be performed by the City Engineer.

(1) **DIVISION OF ENGINEERING.** The Division of Engineering in the Department of Public Works shall be supervised by the City Engineer.

The Division of Engineering shall perform all engineering services for the Department and for such other departments of the City as may be required. The supervision of all construction work undertaken by the City shall be furnished by the Division of Engineering except as otherwise ordered by the City Council.

(2) **DIVISION OF STREETS AND STORM SEWERS.** The Division of Streets and Storm Sewers in the Department of Public Works shall be supervised by the Street Superintendent. He shall have supervision of the maintenance and cleaning of streets, the removal of snow and ice therefrom, the maintenance of bridges and storm sewers, the collection of garbage and refuse materials, the destruction and removal of noxious weeds and the performance of such other services as may be required by the City Engineer or the City Council. The garbage disposal operators shall be hired by the Department of Public Works with the approval of the Mayor.

(3) **DIVISION OF WATER WORKS.** The Division of Water Works in the Department of Public Works shall be supervised by the Board of Water Commissioners. The Board of Water Commissioners shall have the powers and duties provided by state law and City ordinances.

. . .

5. **DIVISION OF SANITARY SEWERS AND SEWAGE DISPOSAL.** The Division of Sanitary Sewers and Sewage Disposal in the Department of Public Works shall be under the supervision of the City Engineer. The sewage plant operator shall have the powers and duties provided by State statutes

and City ordinances, and he shall supervise the maintenance of the sanitary sewer system and sewage disposal plant.

. . .

7. DIVISION OF BUILDINGS AND GROUNDS. The buildings and Grounds Committee shall consist of the Welfare Committee. All requests for structural remodeling and alterations to any City owned buildings shall be referred to the Buildings and Grounds Committee. The committee shall investigate each request and make its recommendation to the Common Council as to whether or not the request shall be approved. (Cr. #74-35)

6. That currently, the City employs the following 36 individuals, all represented by the Teamsters, in the Department of Public Works (DPW):

Dennis A. Bachler		Heavy Equip. - IV
Kenneth J. Bachler		Heavy Equip. - IV
Danny D. Bratz		Truck Driver - II
Richard R. Bucholz		Cement/Mason - III
Dennis L. Buedler		General Labor - I
Neal D. Christian		Sanitation
Harley E. Frenzel		Small Equip. - II
Kenneth A. Garbelman		Heavy Equip. - IV
Steven T. Gillis		Mechanic - IV
Bradley O. Hafferman	P	General Labor - I
Robert C. Heese		Sweeper - III
Don King		Small Equip. - II
Donald R. Kohn		Heavy Equip. - IV
Alan F. Kumbier		Cement/Mason - III
Donald L. Kurz		Truck Driver - II
George B. Markl		General Labor - I
Ronald L. McCaig	P	Small Equip. II
Joseph G. Meyers	P	General Labor - I
Jack S. Moore	F	Tree Trimmer - II
Thomas A. Naatz		Cement/Mason - III
Richard J. Nelson		Power Equip. - III
David W. Peirick	F	Tree Trimmer - II
Jeffrey A. Pirkel	P	Leadman - II
Michael E. Rohr		Mechanic - IV
William F. Saniter		General Maint. - II
Gene P. Schilling		Heavy Equip. - IV
Richard B. Schultz	F	Bucket Truck - IV
Kenneth F. Schwantes		Sanitation
Marvin R. Staude		General Maint. - II
Arnold W. Strege	P	Small Equip. - II
Jerome A. Sweeney	P	General Labor - I
Michael R. Timm		Sanitation
Gerald A. Zeitler	P	Small Equip. - II
Roy W. Zidkert		Sanitation
Delyle L. Zwieg		Truck Driver - II
Lester T. Zwieg		

P=Park

F=Forestry

All of the rest are Street

7. That the City also employs one clerical employe in the Streets Division of DPW, Daniel L. Wiedenfeld (Title: Secretary), and one clerical employe in the Parks Division of the DPW, Catherine M. King (Title: Secretary); that neither of these individuals or their positions has been or is now represented by the Teamsters; that neither of these individuals have an office located at the DPW shop but, rather, both of them have offices in City Hall, located at 106 Jones Street, Watertown; that the duties of these secretaries include typing, filing, ordering supplies, receiving equipment and keeping inventory; and that these secretarial employes are supervised by the Superintendent of the DPW who is also the City Engineer.

8. That the City also employs two custodians in the Municipal Building Department who are not now and have not been represented by the Teamsters; that the duties of these Custodians include responsibility for the general clean-up and maintenance of the City Hall Building and the grounds surrounding it; that these positions require some knowledge of plumbing, electricity and heating as well as the operation of cleaning and gardening equipment; that these Custodians are supervised by the same Parks Division/DPW supervisors who supervise Parks Division Teamster members; and that the work location for these positions is the City Hall Building and these two custodial employes do not work out of the Streets Division Shop as do other DPW employes.

9. That the City also employs the following unrepresented employes who are not supervisory, managerial or confidential employes in each of the listed Departments:

SENIOR CENTER

<u>Name</u>	<u>Title</u>
Diane M. Hiller	Secretary (P.T.) 1/
Robert S. Westenberg	Custodian (P.T.)

TREASURER

<u>Name</u>	<u>Title</u>
Dawn L. Schumacher	Secretary
Patricia A. Sievert	Secretary (P.T.)

POLICE DEPARTMENT

<u>Name</u>	<u>Title</u>
Patricia M. Barry	Court Officer
Ruth A Einfeldt	Parking Enforcement
Suzanne P. Haberkorn	Clerk-Typist
Susan M. Lentz	Clerk-Typist
Sharon A. Moehling	Dispatcher

ASSESSOR

<u>Name</u>	<u>Title</u>
Thomas D. Brandt	Property Appraiser
Janet M. Stangler	Secretary
Wayne R. Vanderpoel	Assistant Assessor

CLERK

<u>Name</u>	<u>Title</u>
Cynthia D. Rupprecht	Deputy City Clerk

ENGINEER

<u>Name</u>	<u>Title</u>
John J. Damman	Technician
Georgene A. Mc Caig	Secretary

HEALTH

<u>Name</u>	<u>Title</u>
Mary A. Affeld	Secretary
Sandara L. Keever	Health Aide (P.T.)

1/ "P.T." designates a part-time employe position.

and that the City of Watertown employs the following 12 unrepresented individuals in its Waste Water Treatment Plant (WWTP):

James R. Arndt	Sewer Cleaner
Robert Couse	Maintenance (P.T.)
Jefferey R. DeWitt	Operator
Kevin Freber	Operator
Cheryl L. Janny	Lab. Tech.
Barbara Kofler	Secretary (P.T.)
Leonard P. Lorenz	Maintenance
Tracey A. Rink	Operator
Michael J. Schilling	Operator
Denise A. Smith	Lab Tech. Jr.
Robert A. Svatos	Operator
Steven P. Zallar	Crew Foreman

10. That the City also employs the following unrepresented employees in the following Departments of the City: In the Building Inspection Department -- two employees and in the Library Department -- 12 employees; that the parties stipulated that the Library is run by the Library Board which is a separate entity from the City and which independently sets Library policies and does all hiring and firing of Library employees and that the 12 Library employees who are unrepresented, should not be included in a unit with unrepresented City employees; that in regard to the Building Inspection Department, the parties stipulated that the two inspectors in this Department are craft employees who the Petitioner does not seek to represent; that the parties further stipulated that the Water Department is a separate entity (created under State law), and that Water Department employees are not employees of the City; that the parties also stipulated that Sheryl Utley, Administrative Secretary (Police Department) Tammy Appenfeldt, Secretary (Fire Department) Bonnie Butisen, Administrative Secretary (Clerk's Department) should be excluded from any unit as they are confidential employees based upon their current duties; that the parties stipulated that Ira Frienfrank, Custodian and Erma Kohof, Secretary (Clerk's Dept.) should be excluded from any unit as temporary employees; and, that the parties stipulated that all department heads and elected officials should be excluded from any appropriate bargaining unit.

11. That since 1962 Teamsters have been the exclusive representative of certain blue collar employees of the City of Watertown (Dec. No. 6139 (WERC, 11/62)); that following an election conducted by the Commission on September 27, 1973, pursuant to a petition filed by the instant Petitioner herein, the Teamsters were certified as the exclusive representative of "all employees of the City of Watertown employed in the Street Department, Parks Department, and Sanitation Department, excluding supervisors and confidential employees," Dec. No. 12179 (WERC, 9/73); that on September 11, 1975, the WERC directed an election, pursuant to the instant Petitioner's petition for election (Dec. No. 13942 WERC 9/75), among the following groups:

VOTING GROUP NO. 1

All regular full-time and regular part-time employees of the City of Watertown employed in the following positions: administrative, technical and clerical employees employed in the Mayor's office, City Clerk's office, Treasurer's office, Assessor's office, Public Works, Engineering, and Street Departments, Inspection Department, Health Department, Library, Park and Recreation Department, and in the Police Department (non-sworn employees), plant operators and maintenance employees employed in the Sewage Department, landfill operators employed at the Sanitary Landfill, building maintenance employees employed at City Hall and the Library, and parking meter repairmen, conditionally excluding all regular full-time and regular part-time professional nurses and also conditionally excluding all regular full-time and regular part-time craft employees (Plumbing Inspectors and Electrical Inspectors) and fully excluding all supervisory, managerial, executive, professional, craft, confidential employees, school crossing guards and all other employees of the City of Watertown. . . .

VOTING GROUP NO. 2

All regular full-time and regular part-time professional nurses employed by the City of Watertown excluding supervisory, managerial, executive and confidential employes, and all other employes of the Municipal Employer

VOTING GROUP NO. 3

All regular full-time and regular part-time craft employes (Plumbing Inspectors and Electrical Inspectors) employed by the City of Watertown but excluding supervisory, managerial, executive and confidential employes and all other employes of the Municipal Employer;

that, thereafter, Petitioner was certified as the exclusive collective bargaining representative of the employes described above in "Voting Group No. 1" and that no representative was certified to represent Voting Groups 2 and 3; that in said proceeding the Commission neither had before it nor did the Commission decide whether it would be appropriate in the City of Watertown to mix "white collar" and "blue collar" employes in one bargaining unit; that following certification in September of 1975, the City and Petitioner entered into a collective bargaining agreement covering the period from ratification of the agreement through December 31, 1977; that on September 28, 1977 the WERC conducted a decertification election (Dec. No. 14787) among the employes in "Voting Group No. 1" above which Petitioner lost; that the eligibility list for that decertification election included incumbents of the following positions:

- Secretary to City Treasurer
- Secretary to City Assessor
- Secretary to City Engineer
- Secretary to Street Dept.
- Secretary - Health Dept.
- Secretary - Park & Recreation
- Account Clerk
- Meter Maid
- Clerk Dispatcher - Police Dept.
- Library Assistant #1
- Library Assistant #2
- City Hall Custodian

- Library Custodian
- Engineering Technician
- Parking Meter Repairman
- Sewage Plant Operator

- Sewage Maintenance Man
- Sanitary Landfill Operator #1
- Sanitary Landfill Operator #2
- Plumbing Inspector
- Electrical Inspector
- Assistant Assessor;

and on October 6, 1977 the WERC certified the results of this election; and that since October 6, 1977, the employes listed in "Voting Group No. 1" above have been unrepresented.

12. That the WWTP is located in a separate building in the extreme southern portion of the City which is across the Rock River from City Hall, off Hoffman Drive, about 1.5 miles from City Hall; that the DPW and the Parks Department facilities are also located in separate buildings approximately half the distance between the City Hall and the WWTP; that employes of the WWTP are currently paid pursuant to the same City Payroll Ordinance as other unrepresented employes under the following schedule:

	<u>Start</u>	<u>After 6 mo.</u>	<u>18 mo.</u>
Wastewater Plant Operator & Lab Tech	8.34	8.89	9.14

	<u>Start</u>	<u>After 6 mo.</u>	<u>18 mo.</u>
Wastewater Crew Foreman	9.25	9.75	10.25
Wastewater Lab Tech (Part-time)	5.48	6.00	6.26
Wastewater Maintenance Man			9.50

that pursuant to the contract between the City and the Teamsters, the Teamster DPW employes are organized into the following classifications and paid at the following rates:

- Class I - \$8.75 - General Laborer.
- Class II - \$8.95 - Tree Trimmer, Truck Driver, Street and General Maintenance, Small Power Equipment.
- Class III - \$9.22 - Leadmen, Power Equipment (Non-construction), Cement and Mason.
- Class IV - \$9.43 - Mechanics, Bucket Truck Operator, and Heavy Power Equipment Operators (Construction);

that the City's secretarial/clerical employes earn up to \$6.26 per hour; that the remaining City classifications proposed for inclusion in a residual unit are paid as follows:

Parking Enforcement Officer	- \$ 6.06 per hour;
Property Appraiser	- \$ 9.30 per hour;
Assistant Assessor	- \$11.22 per hour;
Engineering Technician	- \$ 8.91 per hour;
Custodian	- \$ 7.62 per hour;
Court Officer	- \$ 7.26 per hour;
Health Aide	- \$ 4.69 per hour;

that the WWTP operates 10 hours per day during the week and WWTP employes work eight hour staggered shifts starting at 5:30 a.m., 6:00 a.m., 7:00 a.m., 8:00 a.m., 10:00 a.m. and 1:30 p.m.; that other non-represented employes at issue here work from 8:00 a.m. to 5:00 p.m. and that DPW employes (Streets, Parks and Forestry) work from 7:00 a.m. to 3:30 p.m.; that all City employes also receive longevity pay after 8, 12 and 16 years of service as well as City-paid (single plan) health insurance and partially-paid (family plan) health insurance; that all City employes are entitled to call-in time, breaks, 10 holidays, sick leave and sick leave accumulation, jury duty and military leave supplemental pay, Workers Compensation Supplemental pay, funeral leave, pension (WRS) and vacation time off (although in this regard, the Teamsters contract contains slightly less vacation benefits than are given to the unrepresented City employes at issue here), and all employes receive life insurance (although the Teamster employes receive \$10,000 of such insurance at City expense while unrepresented employes at issue receive \$5,000 of such at City expense.)

13. That there are no job descriptions for WWTP employes; and that WWTP employes have the following titles and duties: Sewer Cleaners are in charge of the lift station, the hauling of sludge by truck and the maintenance of the lift station; Maintenance employes are in charge of making major repairs on equipment such as overhauling and rebuilding pumps as well as performing smaller maintenance duties such as changing oil on machinery; Operators are responsible for operating the wastewater plant, drawing the tanks off, checking and monitoring gauges and keeping a running check on the smooth operation of all equipment; Lab Technicians perform all tests on wastewater to assure quality control and conformance with State regulations; the Crew Foreman assigns, directs and coordinates all work in the plant in consultation with the Superintendent and orders the supplies and equipment.

14. That there is no interchange of employes between the WWTP, the DPW or other City departments; that all WWTP employes take their breaks at the WWTP, away from other City employes; that approximately 10 to 15 times per year WWTP employes work on the same City streets as City Street Department employes when Street

Department employes are repairing a street and WWTP employes are maintaining the manholes free of paving materials; that if City sewers otherwise need cleaning, repairs, or maintenance, WWTP employes go out to make those repairs just as Street Department employes go out to repair and maintain City streets; that all WWTP employes (including lab technicians) must be able to operate an overhead crane located at the WWTP and that some DPW employes must be able to operate such a crane; that approximately once a year or once every two years, WWTP employes go to the Street Department garage to operate the overhead crane located there for WWTP purposes; that this is the only time that WWTP employes use DPW equipment; that there have been no transfers of employes from DPW to WWTP or vice versa in the past 15 years; that there are no instances in the past where DPW employes have assisted WWTP employes in an emergency situation; that approximately 15 years ago one former DPW employe applied for and was hired by the WWTP where he is still employed; that WWTP employes and DPW employes (excluding the secretaries) must wear clothes to work that can get dirty; and that the supervisors of the various City departments in question do not overlap or cross-over among departments except that the City Engineer heads both the WWTP, the DPW and the Engineering Department.

15. That the unrepresented employes in the Treasurer's Department, Dawn L. Schumacher and Patricia A. Sievert are secretaries who perform clerical duties such as receiving monies on behalf of the City, typing, filing necessary reports, and billing residents for City services.

16. That the Senior Center "Department" consists of a separate building located approximately nine blocks from City Hall which is a gathering place and social center for the City's senior citizens; that Diane M. Miller is a part-time secretary employed exclusively at the Senior Center performing clerical duties such as typing, filing and answering telephones; and that Robert S. Westerberg is a part-time custodian performing custodial maintenance duties (like those performed by the two custodians employed in the Municipal Building Department) at the Senior Center only.

17. That the Court Officer employed by the Police Department performs clerical-type duties such as typing, filing, and transcribing from records and tape recordings; that the Parking Enforcement Officer employed by the Police Department is responsible for ticketing cars parked at expired parking meters in downtown Watertown, for typing up tickets and filing reports; that it was stipulated by the parties that no special skills or education are required for the position of Parking Enforcement Officer; that the two Clerk-Typists (Haberkorn and Lentz) perform clerical tasks such as typing, filing and answering telephone calls for the Police Department; and, that the Dispatcher (Moehling) takes emergency calls for the Police Department, dispatches protective services employes, records all calls and does some typing.

18. That the Property Appraiser (Brandt) essentially takes photographs of new construction and new building additions and appraises them for the City Assessor; that the Secretary in the Assessor's Department (Strangler) performs general clerical/secretarial work for the Assessor such as typing, filing and answering the telephone; and, that the Assistant Assessor in the Assessor's Department (Vanderpoel) must be certified by the State to assess property values and he assesses City properties for the City.

19. That the Deputy City Clerk (Rupprecht) employed in the Clerk's Department performs accounting, typing and filing duties.

20. That the Technician (Damman) in the Engineer's Department is a draftsman who must be able to read blueprints; and, that the Secretary (McCraig) of this Department performs clerical duties such as typing and filing.

21. That both the part-time Secretary (Affeld) part-time and the Health Aide (Keever) employed in the Health Department perform typing, filing and other secretarial/ clerical functions for the Department.

22. That with the exception of the Senior Center employes, all of the unrepresented employes listed in Finding of Fact 8 have their offices in the City Hall Building; that the only employes who spend any work time away from City Hall

are the Parking Enforcement employe and the Property Appraiser and Assistant Appraiser; that each of these Departments listed in Finding Number 8 has its own supervisors (different from supervisors of the DPW and the Waste Water Treatment Plant (WWTP)), who direct the work of these unrepresented employes; that the only supervisor shared by DPW and WWTP is the City Engineer who acts as the Superintendent of both the DPW and of the WWTP; and, that these unrepresented employes' wages are governed by City Payroll Ordinance and their hours of work, benefits and other terms and conditions of employment are controlled by Chapter 4 of the City Personnel Code.

23. That a collective bargaining unit consisting of only WWTP employes or WWTP and currently unrepresented custodial employes would lead to undue fragmentation of bargaining units because such unit(s) do not include certain "white collar" employes.

24. That to conclude that WWTP employes or WWTP employes and unrepresented custodial employes appropriately belong in the existing DPW unit and then to conduct an accretion election among WWTP employes or among WWTP employes and currently unrepresented custodial employes would result in said employes stranding themselves as an unrepresented group should they vote not to be represented by the Intervenor which would produce undue fragmentation of bargaining units.

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

CONCLUSIONS OF LAW

1. That a bargaining unit consisting of some or all remaining unrepresented blue collar non-craft employes of the City of Watertown would result in undue fragmentation of bargaining units under Sec. 111.70(4)(d)2.a., Stats., and thus would be inappropriate for the purposes of collective bargaining.

2. That it is inappropriate under the circumstances herein to conduct the accretion election sought by Teamster Union Local No. 695.

3. That a bargaining unit of "all regular full-time and regular part-time employes of the City of Watertown not currently included in another bargaining unit, but excluding all supervisors, confidential employes, professional employes, craft employes, elected officials, department heads, and temporary employes," constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

4. That a question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., presently exists among employes of the City of Watertown in the appropriate bargaining unit set forth in Conclusion of Law 3.

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

DIRECTION OF ELECTION

IT IS HEREBY ORDERED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in the following voting group:

All regular full-time and regular part-time employes of the City of Watertown not currently included in another bargaining unit, but excluding all supervisors, confidential employes, professional employes, craft employes, elected officials, department heads, and temporary employes, who are employed on August 21, 1987 except such employes as may prior to the election quit or be discharged for cause, for the purposes of determining whether a majority of the employes in said voting

group desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO for the purposes of collective bargaining with the City of Watertown 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 21st 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

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

BACKGROUND:

The instant amended petition, filed by Wisconsin Council 40, AFSCME, AFL-CIO, seeks an election in either a separate bargaining unit of the City's Waste Water Treatment Plant (WWTP) employees or in a combined residual unit of WWTP employees and all other unrepresented City of Watertown employees (with some stipulated exclusions). Currently, the Teamsters Local 695 represent the employees employed in the City's Department of Public Works, consisting of Streets, Parks and Forestry Departments (DPW), in a certified unit. The Teamsters have intervened in this case and they seek to have an "accretion" election among all unrepresented WWTP "blue collar" employees of the City to determine whether they wish to be represented by the Teamsters in the existing DPW unit.

POSITIONS OF THE PARTIES:

The Petitioner asserts that there is no significant community of interest between the DPW employees represented by the Teamsters and WWTP employees and, therefore, that an accretion election would be inappropriate. Petitioner points to the lack of similarity between the duties and functions of WWTP and DPW employees on a day-to-day basis, as evidenced by the following factors: DPW employees are primarily engaged in construction and maintenance of non-machine based equipment and facilities and also operate mobile motor vehicles, while WWTP employees are primarily responsible for the operation, monitoring and maintenance of stationary continuous-operation machinery and systems. Thus, the Petitioner contends that the Teamsters' assertion that it should be allowed to represent all "blue collar" employees is too simplistic because of the dissimilarity of activities of DPW and WWTP employees. The Petitioner argues that WWTP employees (in operating and monitoring equipment) perform ministerial-type duties more comparable to clerical duties and dissimilar from DPW employee duties. The Petitioner also points to the lack of common supervision, the lack of a common work place, different benefits and the separate bargaining history of the WWTP and DPW employees. The Petitioner notes that in the 1970's, the Commission certified AFSCME as the representative of an overall residual City unit (like the alternate unit petitioned for here) which included white collar/clerical as well as blue collar employees and for which Petitioner negotiated one contract, although Petitioner was later decertified. The Petitioner finally asserts that if the Commission simply orders an accretion election, this would deprive WWTP employees of a real choice for representation.

The Teamsters argue that WWTP employees should be accreted into the existing Teamster DPW unit since the WWTP employees are essentially blue collar employees as are DPW employees. Therefore, the Teamsters assert that the Commission's policy against fragmentation of bargaining units makes an accretion election appropriate. In addition, the Teamsters observe that DPW and WWTP employees: (1) have common skills and duties, since both groups perform manual-type work, operate heavy equipment, and do maintenance work; (2) have some common supervision, since the City Engineer is the overall supervisor for both DPW and WWTP employees; (3) work on City streets relatively frequently, sometimes at the same site; and (4) one former DPW employee later hired by the WWTP and remains employed at the WWTP.

The Teamsters cite Commission cases as precedent for their view that a "blue collar" unit is appropriate: City of Evansville, Dec. No. 16671 (WERC, 11/78); City of Richland Center, Dec. No. 17950 (WERC, 7/80). The Teamsters also argue that Commission precedent supports a conclusion that white collar and clerical employees should be placed in separate units, and do not belong in the same unit: City of Franklin, Dec. No. 18208 (WERC, 11/80).

The City argues essentially along the same lines as the Teamsters, emphasizing the similarities between DPW and WWTP employees. In addition, the City submitted collective bargaining agreements from nearby communities in support of its position that a mixed unit of white and blue collar employees is inappropriate and that an overall blue collar unit is appropriate. The City also cites several cases in support of its arguments that neither petitioned-for unit is appropriate: Wisconsin Dells (Water & Light Department), Dec. No. 14041 (WERC, 10/75); City of New Berlin, Dec. No. 14809 (WERC, 7/79); Village of Union Grove, Dec. No. 15599 (WERC, 6/77); City of Wauwatosa, Dec. No. 12032-C and 17241-17244 (WERC, 8/79); Village of Peewaukee, Dec. No. 17771-A (WERC, 4/81); Village of

Williams Bay, Dec. No. 18972 (WERC, 9/81); Fond du Lac County (Highway Dept.), Dec. No. 7677-A (WERC, 3/82). The City asserts that an accretion election should be held to determine whether WWTP employes wish to be represented by the Teamsters in the existing DPW unit. In its reply brief, the City argues that the Petitioner made four incorrect statements in its brief: (1) that the nature of the WWTP employes was more similar to the clerical and technical duties of City "white collar" employes; (2) that the WWTP employes have concertedly negotiated their terms and conditions of employment with the City Finance Committee; (3) that benefits vary significantly between Teamster employes and unrepresented employes; and (4) that the Commission has previously faced the issue of the appropriateness of Petitioner's previously certified residual unit. The City then points to other facts adduced at the hearing which support its contentions that Petitioner mischaracterized some facts in its brief.

DISCUSSION

There are essentially three issues for decision in this case: (1) whether a unit consisting of only WWTP employes or WWTP employes plus the three currently unrepresented custodial employes is appropriate; (2) whether WWTP employes or all currently unrepresented blue collar employes should be accreted to the existing Teamster DPW bargaining unit; and (3) whether a residual unit consisting of all currently unrepresented blue collar and white collar City employes is an appropriate unit.

In determining whether either of the units sought by the Petitioner are appropriate units, the Commission must consider Sec. 111.70(4)(d)2.a. of MERA, which provides as follows:

The Commission shall determine the appropriate unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such determination, the Commission may decide whether, in a particular case, the employes in the same or several departments, division, institutions, crafts, professions or other occupational groupings constitute a unit.

In applying the above statutory criteria in establishing appropriate bargaining units, the Commission has considered the following factors:

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

Considering these issues in light of the above-listed factors, we note that the record reveals that the City's currently unrepresented white and blue collar employes' (hereafter residual employes) terms and conditions of employment are set by the City Ordinance and/or City Personnel Code; that these terms and conditions are uniform for these residual employes, but they are in some respects different from DPW unit employes' terms and conditions of employment set by the

Teamster's labor agreement with the City. Although residual employees' work locations differ, many of them share City Hall as their common workplace, and those that do not share a common workplace with other residual employees do not share a truly common workplace with DPW unit employees. In this regard, we note that even when DPW and WWTP employees share city streets as their work location, they have not worked together. Furthermore, the extremely infrequent use of a DPW crane by WWTP employees is insufficient to establish either a common workplace or similarity in duties and skills among DPW and WWTP employees. Finally, the fact that one former DPW employee was later hired, independently, by the WWTP is insufficient to show any interchange or policy of hire between the DPW and the WWTP.

In addition, we note that City white collar employees (except the secretary and technician in the Engineering Department) do not share any common supervisors with either DPW or other residual employees. The fact that the City Engineer acts as ultimate supervisor over lower level WWTP and DPW supervisors does not demonstrate true commonality of supervision for purposes of finding a community of interest between these employees. Although the record reveals that City white collar employees' wages are generally substantially lower than those of DPW employees and WWTP employees, it is also true that approximately eight of ten full-time WWTP employees make from 29 to 41 cents per hour less than DPW unit employees. Also, there does not appear to be anything inherent in the present pay distinctions which would prevent the City from negotiating differing hourly rates and conditions of employment for residual employees. Although WWTP employees operate equipment and perform maintenance and construction duties, as do DPW unit employees, we are persuaded by Petitioner's arguments that the majority of the work of WWTP employees utilizes specialized stationary equipment and is significantly different from that of the DPW employees.

As to the factor of bargaining history, listed above, the evidence indicated that in 1975 the Commission certified, as appropriate, a residual mixed unit of white and blue collar City of Watertown employees, similar to the one petitioned for here; that those unit employees, through Petitioner, then negotiated and entered into a collective bargaining agreement with the City; and, that since the decertification of Petitioner as representative of the employees in that initial residual unit, the residual City employees have remained unrepresented.

With regard to the anti-fragmentation factor, several observations may be made based upon this record. Creation of a separate WWTP employee unit or a unit of WWTP employees and the three unrepresented custodial employees would certainly fragment City units. If we were to find either of these units appropriate, and an election resulted in Petitioner prevailing, the City would then have to bargain with two blue collar employee units (the DPW unit and the WWTP or WWTP/custodial unit described above). The City's secretarial/clerical/white collar employees would then remain in a separate potential white collar unit which could then be organized and recognized or certified. If we were to order an accretion election among either WWTP employees or WWTP and the three unrepresented custodial employees because we concluded that they could only appropriately be included in the DPW unit, the potential for a white collar unit remains. Importantly, such a result would also restrict these employees' choice to representation by the Teamsters in the DPW unit, or no representation at all. Neither the Petitioner nor any other labor organization could appear on the ballot in this situation or in future representation because if Teamsters lost the accretion election, the members of the accretion election voting group would not be able to seek representation in another unit by another labor organization. Furthermore, we are mindful that we have refused to participate in the piecemeal placement of a position or positions into an existing bargaining unit in situations similar to the accretion election situation proposed here by the City and the Teamsters. As we noted in Door County (Highway Department), Dec. No. 7859-A (WERC, 5/85):

If, for example, the instant position is but one of several currently unrepresented municipal employees holding nonprofessional, noncraft, nonclerical positions in County employment, then granting the Union's petition could become the first in a series of proceedings to expand the instant unit to include more and more of those employees, all without benefit of a representation election in an appropriate unit. That consideration has led the Commission to refuse to conduct an election among less than all residual professional or nonprofessional employees of an employer where a union seeks to

obtain representation rights for only a segment of the remaining unrepresented employes (citation omitted). Id. at p 6-7).

In contrast, were we to find appropriate an overall residual unit, the existing DPW unit and its bargaining relationship with the City could remain undisturbed. The interests of anti-fragmentation are well served because the City is confronted with the potential of only two units. Furthermore, if residual unit employes chose not to be represented by Petitioner, residual employes would not be foreclosed from seeking other representation from a different labor organization unlike the accretion election situation described above. Rather, a different labor organization could later petition for an election among these residual employes who could again freely choose whether or not they wished to be represented by that different labor organization.

Upon this record it appears that the factors of similarity of skills and duties, of wages, hours and working conditions and the commonality of workplace and supervision weigh on both sides of the issues before us. Therefore, these factors are not necessarily determinative of the issues here. However, the factors of bargaining history as to the previously existant AFSCME residual unit and avoiding undue fragmentation clearly favor our conclusion that an overall residual unit is appropriate here.

Based upon the evidence in this case, we conclude that a unit consisting solely of WWTP employes or WWTP employes and the three unrepresented custodial employes would be inappropriate as it would cause undue fragmentation. We also conclude that ordering an accretion election among these employes to determine whether or not they wish to be represented by the Teamsters in the existing DPW unit and would result in said employes stranding themselves as an unrepresented group should they vote not to be represented by Teamsters which would also produce undue fragmentation of bargaining units. 2/ We also note that if the employes voted for accretion, employes with somewhat dissimilar duties, skills, working conditions, and supervision would be combined.

The overall residual unit sought herein in the alternative by Petitioner is a type of unit we have historically found appropriate. As we noted in City of Green Bay (City Hall), Dec. No. 21210-A (WERC, 3/84), and cases cited therein, the Commission has interpreted the act to mean that "at times there is a need for a mix of bargaining units which afford employes the opportunity to be represented in workable units by organizations of their own choosing, which may reasonably be expected to be concerned with the unique interests and aspirations of the employes in said unit . . ." (emphasis added). Id. at p.11. Thus, we are not constrained by the statute or by our own precedential interpretation of the statute to find the most appropriate unit. Rather, the statute and the case law require us to find an appropriate unit based upon application of the above-listed factors.

Several of the cases cited by the City and the Teamsters in support of their contention that an overall blue collar unit is appropriate were based upon facts not present here. For example, some cited cases dealt with petitions for overall "blue collar" units in situations where fewer employes were involved. See, e.g. Village of Union Grove, Dec. No. 15599 (WERC, 6/77); City of Evansville, Dec. No. 16671 (WERC, 11/78); Village of Williams Bay, Dec. No. 18972 (WERC, 8/81). Village of Pewaukee (Department of Public Works), Dec. No. 17771-A (WERC, 4/81); other cases, used by the parties, actually have a mixed thrust--demonstrating our consistent disfavor of departmental units while grouping "blue collar" employes together based upon petitions therefore, See, e.g. City of Wisconsin Dells (Water and Light Department), Dec. No. 14041 (WERC, 11/75); City of New Berlin, Dec. No. 14809 (WERC, 7/76); City of Evansville, supra; City of Richland Center, Dec. No. 17950 (WERC, 7/80). These cases, we believe, are not applicable here.

Finally, the City of Franklin 3/ case, cited by the Teamsters is factually distinguishable from the instant case and does not bind us here. That case involved a voluntarily recognized mixed unit of white and blue collar employes wherein a competing labor organization sought severance of the white collar employes into their own appropriate unit.

Based upon the entire record in this case, we have found that the petitioned-for overall residual unit (including WWTP and the three unrepresented custodial employes and all eligible white collar City employes) is an appropriate unit. Since the Teamsters have disavowed any interest in standing for a representation election in such a unit, we have ordered an election among those employes to determine whether or not they wish to be represented by Petitioner.

Dated at Madison, Wisconsin this 21st day August, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

2/ Fox Valley Technical Institute, Dec. No. 13204 (WERC, 12/74).

3/ Dec. No. 18208 (WERC, 11/80).