

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS LOCAL NO. 75
Involving Certain Employees of
CITY OF SEYMOUR
(DEPARTMENT OF PUBLIC WORKS)

Case 10
No. 39327 ME-2739
Decision No. 25201

Appearances:

Mr. Danny L. McGowan, Business Representative, Teamsters Local No. 75, 1546 Main Street, Green Bay, Wisconsin, 54302, appearing on behalf of the Petitioner.
Mr. Richard J. Dietz, Attorney at Law, 800 St. Francis Road, East, De Pere, Wisconsin, 54115, appearing on behalf of City of Seymour.
Mr. Greg Spring, Staff Representative, Seymour Employees Union, Local 455-A, AFSCME, AFL-CIO, 1121 Winnebago Avenue, Oshkosh, Wisconsin, 54901, appearing on behalf of the Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DIRECTION OF ELECTION

Drivers, Warehouse and Dairy Employees, Teamsters Local No. 75 having, on September 8, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employees of the City of Seymour, to determine whether such employees desired to be represented by said Petitioner for the purposes of collective bargaining; and hearing in the matter having been conducted on November 11, 1987, at Seymour, Wisconsin, before Examiner Raleigh Jones, a member of the Commission's staff; and the motion of Wisconsin Council 40, AFSCME, AFL-CIO, to intervene in this matter having been granted at the hearing; and the transcript of the proceedings having been received on December 1, 1987; and the City having submitted a brief on January 6, 1988; and the remaining parties having informed the Commission by January 22, 1988, that they would not be submitting briefs; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That City of Seymour, hereinafter referred to as the City, is a municipal employer, with its offices at 328 North Main Street, Seymour, Wisconsin.
2. That Teamsters Local 75, hereinafter referred to as the Teamsters, is a labor organization with its offices at 1546 Main Street, Green Bay, Wisconsin.
3. That Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization with its offices at 5 Odana Court, Madison, Wisconsin; and that during the period of April 15, 1986 to December 31, 1987, a collective bargaining agreement was in force between the City and the Seymour Employees Union (SEU), Local 455-A, AFSCME, AFL-CIO, by which agreement the City recognized the Union as the sole and exclusive bargaining agent for a unit consisting of all full-time and regular part-time employees of the City of Seymour Department of Public Works, Water Utility and Wastewater Treatment Plant, but excluding supervisory, clerical, management, office and administrative employees.
4. That on September 8, 1987, the Teamsters filed a petition with the Commission wherein it requested that the Wisconsin Employment Relations Commission conduct an election pursuant to Sec. 111.70(4)(d), Stats., to determine whether certain employees of the City desired to be represented by the Teamsters for the purposes of collective bargaining; and that the bargaining unit for which the Teamsters petitioned for an election is the same as the unit represented by AFSCME.

5. That hearing on the petition was held on November 11, 1987, at which time AFSCME was granted permission to participate as Intervenor; and that the Intervenor proposed at the hearing that the bargaining unit as currently constituted was inappropriate and that the Commission should separate the unit into two units, as existed prior to January 8, 1986.

6. That prior to January 8, 1986, the eight employees were represented by two separate labor organizations, the Department of Public Works Salaried Employees and the Seymour Employees Association; that the Salaried Employees unit consisted of the three employees permanently assigned to the Wastewater Treatment Plant, with the five remaining employees comprising the Association; that on or about January 8, 1986, the Association voted to affiliate with Wisconsin Council 40, AFSCME, AFL-CIO; that also on or about January 8, 1986, the Salaried Employees unit, by majority vote of its members, requested membership in the Association and affiliation with AFSCME; and that the initial collective bargaining agreement negotiated subsequent to those actions combined the affected employees into one bargaining unit, as described in Finding of Fact 3.

7. That the SEU bargaining unit employees permanently assigned to the Wastewater Treatment Plant are Orlin Bishop, Kenneth Eick and Henry Kindsgrab; that the remaining SEU bargaining unit members are Floyd Dalke, Dennis Krueger, Donald Langer, Eugene Strzelecki and Joseph VanderVoort.

8. That the pay classifications, and current incumbents, as of January 1, 1987, were as follows:

Laborer/Driver (Krueger, Strzelecki)	\$7.70
Laborer/Light Equipment Operator & Wastewater Plant Operator (Dalke, Eick, VanderVoort)	\$8.35
Mechanic (Langer)	\$8.49
Equipment Operator (vacant)	\$8.55
Laboratory Technician (Kindsgrab)	\$9.17
Plant Operator (Bishop)	\$9.99

9. That the Superintendent of Public Works; Earl Gosse, has overall control of all eight employees, subject to the ultimate authority of the Mayor and Common Council; that the next ranking employee is the supervisor of the Wastewater Treatment Plant, Richard Elmergreen, who is excluded from the bargaining unit as a supervisor; that the authority to assign personnel to various tasks, including assigning treatment plant employees to non-plant activities, rests with the Superintendent; and that in the absence of the Superintendent, the treatment plant supervisor assumes the Superintendent's department-wide responsibilities and authority.

10. That the official work period for Wastewater Treatment Plant employees consists of either five eight-hour days or four eight-hour days and two four-hour days, Saturday through Friday, provided that any employee assigned to work a shift which includes the two half-days shall be entitled to take off any day during the next succeeding Monday through Friday with the approval of the supervisor; that the official work period for the other employees of the Department consists of five eight-hour days, Monday through Friday; that Wastewater Treatment Plant employees have the option of receiving time and one-half pay or compensatory time off at the rate of one and one-half times the hours worked outside the regular hours, provided that compensatory time shall not exceed 90 hours accrued; that the other departmental employees receive time and one-half pay for all hours worked outside the regular hours of work or the regular work period; that the hours of work, lunch period and rules relating to lunch periods and morning breaks are the same for both sets of employees, except that treatment plant employees working a four-hour day do not receive a lunch break; that treatment plant employees called in after the conclusion of a work day receive a minimum of one hour at time and one-half; that the call-in minimum for other departmental employees is two hours; and that any employee required to obtain licensure or other certification by the State of Wisconsin as a condition of employment receives \$250 annually for each level of sewer plant operator certification obtained, and \$150 annually for licensure as a water works operator.

11. That apart from the pay classifications related in Fact 8 and the various provisions related in Fact 10, those provisions relating to the conditions of employment (e.g., probationary and employment status, promotions and job posting, sick leave, grievance procedure, funeral leave, special leave without pay, paid holidays, vacations, military leave, seniority, longevity, retirement, clothes allowance, group insurance and pay periods) are identical for all eight employees.

12. That the most recent collective bargaining agreement between the City and AFSCME specifically provides that "all employees of the Department of Public Works, Water Utilities and Wastewater Treatment Plant are obligated to perform all work assigned to them by the Department head without regard to the duties and work normally associated with any pay classification;" that none of the positions have formal job descriptions; that at least one treatment plant employee, Kenneth Eick, frequently performs duties such as general repair and maintenance, snow removal, outside and unrelated to the plant; that another treatment plant employee, Orlin Bishop, is licensed as a Grade 2 plant operator, and spends some time, but less time than Eick, performing non-treatment plant maintenance functions; and that the third non-supervisory treatment plant employee, Henry Kindsgrab, the facility's lab technician, performs almost no non-treatment plant duties; that Eick and Bishop are available for assignment to such tasks as repairing broken water mains, street repair, snowplowing, lawnmowing, general building repair and maintenance, and other activities unrelated to the operation of the Wastewater Treatment Plant, subject to the discretion of the Superintendent of Public Works.

13. That the treatment plant facility and the municipal garage (base station for the Department of Public Works) are adjacent buildings located on the same parcel of land; that Wastewater Treatment Plant tasks are performed at the plant; that other public works tasks are performed at the garage, the plant, and at various other locations throughout the city; that the locker room, lunch room, and time clock facilities are all located in the municipal garage; and that all eight employees share these facilities in common.

14. That the employees permanently assigned to the Wastewater Treatment Plant share a community of interest with the other employees of the Department of Public Works.

15. That the division of the current bargaining unit into two units as proposed by AFSCME would result in undue fragmentation.

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 "all full-time and regular part-time employees of the City of Seymour Department of Public Works, Water Utility and Wastewater Treatment Plant, but excluding supervisory, clerical, managerial, office and administrative employees," constitutes an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That the establishment of two DPW bargaining units, consisting respectively of the three employees permanently assigned to the Wastewater Treatment Plant and the five other employees of the Department of Public Works, would result in undue fragmentation of bargaining units, and thus would be contrary to the legislative mandate of Sec. 111.70(4)(d)2.a. within State meaning of

Plant, but excluding supervisory, clerical, managerial, office and administrative employees, who are employed on February 23, 1988, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of the employees in said voting group desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO, or by Teamsters Local 75, or by neither of said organizations, for the purpose of collective bargaining with the City of Seymour on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of
Madison, Wisconsin this 23rd day of February, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

CITY OF SEYMOUR (DEPARTMENT OF PUBLIC WORKS)

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

POSITIONS OF THE PARTIES

Two parties to this proceeding, the City and the Teamsters, posit that the existing bargaining unit, encompassing all full-time and regular part-time employees of the Department of Public Works, excluding supervisory, managerial, clerical, office and administrative employees, is the appropriate bargaining unit. AFSCME's position is that there are two appropriate bargaining units, consisting of (a) the employees of the Wastewater Treatment Plant, and (b) all other Public Works employees not covered by the above-referenced exclusions.

In its brief, the City argued that the department-wide community of interest, coupled with the statutory mandate to avoid undue fragmentation, strongly supports continuation of the existing bargaining unit. In particular, the City cites the common supervision of all employees by the Superintendent of Public Works; the similarity in wages, hours and working conditions; the common workplace; and the unduly small size of the two units as proposed by AFSCME. The City also notes that the current bargaining unit was established with AFSCME's support, and suggests that AFSCME bears the burden of persuasion in advancing a position contrary to the status quo. The City acknowledges certain differences between the groups of employees (e.g., the certification required by treatment plant employees, the existence of an intermediary supervisor at the plant), but argues that they are of relatively minor significance in the overall evaluation.

Neither the Teamsters nor AFSCME filed a brief.

In determining the appropriateness of a unit, the Commission's decision is guided by Sec. 111.70(4)(d)2.a. of MERA, which provides:

The Commission shall determine the appropriate unit for the purposes 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 employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

In exercising the above-noted statutory authority, the Commission has determined appropriate unit questions on a case-by-case basis and has given consideration to the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. 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.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. 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.
6. Whether the unit sought will result in undue fragmentation of bargaining units.

7. Bargaining history. 1/

Contrary to the assertion of the City, the Intervenor does not bear a burden of proof in this proceeding; indeed, inasmuch as election proceedings are non-adversarial, the Commission does not consider burden of proof concepts to be an appropriate guide to resolving the issues presented herein. To the extent that any burden of proof arises, it falls on all parties, to bring forth the information necessary and appropriate to assist the Commission in meeting its statutory obligation to determine the appropriate unit. 2/

It is evident from the record that the Wastewater Treatment Plant employees possess somewhat different skills, and usually perform different duties than the other employees of the Public Works Department. However, while the non-plant employees do not assist in the technical operation of that facility, some plant employees do frequently perform non-facility functions, duties they thus share in common with the other DPW employees. Such sharing of employees can be an important factor in finding a community of interest. 3/ All eight employees work under the supervision of the Superintendent of Public Works, whose jurisdiction includes the Wastewater Treatment Facility and the rest of the Public Works Department, although the three employees of the treatment plant do have an intermediate supervisor between them and the Superintendent. The employees possess substantially similar wages, hours and conditions of employment. Further, the fact that the "minority" group of wastewater plant employees receives higher wages, a supplemental certification bonus, and more flexibility regarding overtime indicates that their interests are not unfairly submerged to the interests of the numerically stronger group of employees. Finally, it is undeniable that a division of the current eight-member unit into units of three and five members respectively would create two very small units in a small municipal work force.

Given the foregoing which demonstrates that the employees in the existing unit possess a substantial community of interest and given the statutory anti-fragmentation mandate, we find the existing unit to be appropriate for the purposes of collective bargaining. Our conclusion is consistent with that reached in other cases in which wastewater plant employees were found to be properly included with other DPW employees in a blue-collar unit. 4/ Accordingly, we have directed an election in the existing unit as sought by the Teamsters.

Dated at Madison, Wisconsin this 23rd day of February, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

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1/ City of Madison, Dec. No. 23183 (WERC, 1/86).

2/ City of Green Bay (City Hall), Dec. No. 21210-A (WERC, 5/84); Durand Joint School District No. 1, Dec. No. 13552 (WERC, 4/75).

3/ City of Marinette, Dec. No. 24353 (WERC, 3/87, p. 9).

4/ City of Wisconsin Dells, Dec. No. 14041 (WERC, 10/75); Village of Union Grove, Dec. No. 15599 (WERC, 6/77); Village of Williams Bay, Dec. No. 18972 (WERC, 9/81); City of Richland Center, Dec. No. 17950 (WERC, 7/80).