

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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TEAMSTERS "GENERAL" LOCAL NO. 200 : Case 91
  
: No. 42762 ME-356
  
Involving Certain Employes of : Decision No. 25646-A
  
:
  
CITY OF GREENFIELD :
  
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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by  
Mr. John J. Brennan, 788 North Jefferson, P.O. Box 92099,  
Milwaukee, Wisconsin 53202, appearing on behalf of the Union.  
Mulcahy and Wherry, S.C., by Mr. Robert W. Mulcahy, 815 East Mason  
Street, Suite 1600, Milwaukee, Wisconsin, 53202-4080, appearing on  
behalf of the City.

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

Teamsters "General" Local No. 200 on August 31, 1989 filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing certified bargaining unit of certain employes of the City of Greenfield to determine whether certain named employes should be included in said unit. Hearing in the matter was held in Greenfield, Wisconsin on February 15, 1990 before Examiner Dennis P. McGilligan, a member of the Commission's staff. A stenographic transcript of the proceedings was completed and received by March 6, 1990. The parties submitted post-hearing briefs, the last of which was received April 20, 1990. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Teamsters "General" Local No. 200, hereinafter the Union, is a labor organization with offices at 6200 West Bluemound Road, P.O. Box 2073, Milwaukee, Wisconsin 53201.
2. City of Greenfield, hereinafter the City, is a municipal employer with offices located at Greenfield City Hall, 7325 North Forest Home Avenue Greenfield, Wisconsin 53220.
3. On March 30, 1988, the Union filed a petition for a representation election among certain employes of the City. The Union sought, in its petition, an election in a claimed appropriate unit consisting of all regular full-time and regular part-time professional employes of the City of Greenfield and all regular full-time and regular part-time nonprofessional employes of the City of Greenfield not currently included in another bargaining unit, but excluding all supervisors, confidential employes, sworn personnel and elected officials.
4. Hearing was held on June 1, 1988 and on June 7, 1988 in Greenfield, Wisconsin at which time the parties reached voluntary agreement on a list of eligible voters in a residual bargaining unit consisting of certain professional, nonprofessional, craft and noncraft employes. The Electrical Inspector position was in existence at the time of the aforesaid petition, but not included in the residual bargaining unit. The Code Enforcement Officer position was not in existence at this time. Following an election, in City of Greenfield, Dec. No. 25646 (WERC, 10/88), the Commission certified the Union as

the exclusive bargaining representative of certain City employes in the following unit:

all regular full-time and regular part-time professional, craft and nonprofessional, noncraft employes of the City of Greenfield, including the City Accountant, Deputy City Assessor, Assistant City Engineer, Engineering Technician, Plumbing Inspector and Police Department Utility Clerk, excluding the Deputy City Clerk, the secretary to the Chief of Police, the secretary to the Director of Public Works, supervisory, managerial, confidential and firefighting employes, elected officials, law enforcement employes with the power of arrest, employes in existing bargaining units, and professional employes in the Health Department.

5. The parties are in the process of negotiating their first contract.

6. On August 31, 1989, the Union filed a unit clarification petition requesting that the positions of Code Enforcement Officer and Electrical Inspector, currently held by David Formella and Donald Haag, respectively, be included in the existing bargaining unit described in Finding of Fact 4, above.

The City contends that the two positions in question are occupied by independent contractors and/or temporary employes and should be excluded from the unit. The City also contends that both employes are professionals, and their inclusion in the residual unit would require a vote to determine 1) whether they would like to be included with non-professionals; and 2) if they would like to be represented by the Union. The City further contends that the Union has not met its burden of proof to accrete the Electrical Inspector which was in existence at the time of the earlier election petition. Finally, the City maintains that the Union has not established a "community of interest" between the residual unit and the two positions in dispute.

7. Donald Haag was hired by the City as Electrical Inspector on a part-time basis in January of 1986. By June or so of 1988, he was regularly working a 40-hour week. There is no evidence in the record as to why the Electrical Inspector position was not previously petitioned for or included in the residual bargaining unit at the time of the aforesaid election. Nor have the circumstances surrounding the Electrical Inspector position materially changed from the time of the prior election petition.

8. The position of Code Enforcement Officer was filled on November 27, 1989 by David Formella. Formella was given a one-year contract of employment which stated he had "no right to future employment". However, at the time of his hire, Formella was told by Mel Teska, the City's Chief Building Inspector who interviewed him, that there was a possibility he could be hired again after one year and that the position would become permanent. Prior to Formella, John Hayes was the Code Enforcement Officer from June to October of 1989. He too had a one-year contract. Prior to June of 1989, there was no Code Enforcement Officer.

9. David Formella has regular hours of employment like other unit employes of 8:00 a.m. to 5:00 p.m. with a one-hour lunch. He works a 40-hour week. Those hours are set by the City and he punches the same time clock that everyone else in the department punches. When he started his employment, he was given direction in code interpretation and enforcement procedures by his direct supervisor, Mel Teska. When he is required to work overtime, it is at the direction of the City. The City withholds taxes, social security and pension contributions from Formella's paycheck. Formella has no supervision duties, and a typical workday consists of approximately four hours making inspections in the field, and another four hours in the office doing related

paperwork. His primary responsibilities include enforcement of the zoning and public nuisance codes. The City provides Formella with an office, secretarial staff, a copy machine, paper supplies, and a mileage reimbursement for his vehicle. The City also provides him with a computer terminal. If Formella wanted to take a day off, or was requesting vacation time, it would need to be cleared with Teska.

10. When David Formella is out in the field doing inspections, he maps his own route, and prioritizes his inspections based on the nature and severity of the problem or complaint. Generally, Formella's work is generated through complaints from the public or referrals from Mel Teska or other staff of the Building Inspection Department, although Formella does initiate his own surveys where he makes windshield inspections of certain neighborhoods (block-by-block surveys starting from one section of the city and then going city-wide all the way across) where he suspects code enforcement violations exist. Formella exercises independent judgment in carrying out his aforesaid duties in the same manner as those already employed in the bargaining unit, like the Plumbing Inspector and the Assistant Building Inspector.

11. As noted above, David Formella has an employment contract with the City which sets out the terms and conditions of his employment. That agreement refers to Formella as an "employee" and indicates that Formella is to be paid at an entry-level rate of \$10.00 per hour (hourly like other employees in the unit) and on a bi-weekly basis (also like other unit employees). The agreement covers items like vacation, holidays, authorized leaves of absence, insurance benefits, sick leave and other terms and conditions of employment. Formella is not to take on additional employment with anyone else during the term of the aforesaid agreement. Under the "duties of employee" section of the agreement, it states Formella must comply "with all directions and orders of the Employer, including all job requirements as set forth in the job description."

12. The City exercises sufficient control over the work function of the Code Enforcement Officer position currently occupied by David Formella, so as to establish that he is not an independent contractor.

13. David Formella, as Code Enforcement Officer, shares a "community of interest" with other employees represented by the Union in the residual bargaining unit described in Finding of Fact 4.

14. David Formella has a reasonable expectation of continued employment in the position of Code Enforcement Officer.

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

#### CONCLUSIONS OF LAW

1. The Union's unit clarification petition is barred with respect to the position of Electrical Inspector because said position was in existence at the time of the original election case, City of Greenfield, Dec. No. 25646, (WERC, 8/88), and the Union failed to show a change in circumstances from the time of the original exclusion.

2. David Formella, the occupant of the position known as Code Enforcement Officer, is a "municipal employe" within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act, and occupies a position which is neither an independent contractor nor temporary, but which is a regular full-time position, properly included within the residual bargaining unit noted in Finding of Fact 4.

Upon the basis of the above and foregoing Findings of Fact and

Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The position known as Code Enforcement officer is hereby included in the bargaining unit noted in Finding of Fact 4.

Given under our hands and seal at the City  
of Madison, Wisconsin this 9th day of  
July, 1990,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairman

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner

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1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(Footnote 1/ continues on page 5.)

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1/ continued

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

The background facts, procedural development and basic positions taken by the parties in this case are as stated in the preface and Findings of Fact.

POSITIONS OF THE PARTIES

The Union

The Union basically argues that the positions of Code Enforcement Officer and Electrical Inspector belong in the City's residual bargaining unit.

In support thereof, the Union contends that David Formella and Donald Haag, who currently hold the aforesaid positions at issue, are municipal employes within the meaning of Section 111.70(1)(i) of the Municipal Employment Relations Act and are not independent contractors as the City contends. The Union argues that the City has retained the right to control the manner in which the duties are performed, although the nature of the positions requires independent judgment exercised in the field similar to those already employed in the bargaining unit. In addition, the Union argues that neither Formella nor Haag have the earmarks of independent contractor status: neither Formella nor Haag have any entrepreneurial investment in their position; neither are paid on the basis of the results they achieve; rather, they are both paid hourly like other employes in the unit; both work regular hours set by the City and punch time clocks like other employes in the unit; both generally work using equipment or supplies provided by the City or are reimbursed by the City; both occasionally receive direction from Mel Teska, their supervisor, and can be disciplined or discharged pursuant to City policy; both have their working conditions and benefits controlled by the City. Furthermore, the Union asserts that the fact these individuals exercise independent judgment at all in their job is due to their professional status rather than any alleged independent contractor status. Finally, contrary to the City's position, the Union maintains that the aforesaid employes are not "temporary" employes, and based on the record evidence share a "community of interest" with the residual employes. The Union rejects the City's procedural objection to the inclusion of the Electrical Inspector based on the fact that said position was only part-time and not addressed at the time of the prior election petition.

The City

In support of its contention that the positions in question are independent contractors, and not appropriately included in the residual bargaining unit, the City emphasizes the following principal arguments:

1. The employes at issue are independent contractors.
  - a) The City has control only as to the result.

- b) The City does not have control over the manner and means by which the job is done.
  - c) Haag is an independent contractor since he is paid by paycheck issued to "vendor"; does not receive fringe benefits; has no deductions taken out of his paycheck; and works independently.
  - d) Formella is an independent contractor because he has a limited one year contract with the City with "no right to future employment"; he works independently, i.e., determines his own workload schedule; the position of code enforcement officer was previously a non-union, one year contract position; and he is a temporary employee.
2. Both employes are "professional" employes as defined in Section 111.70(1)(1) Stats., and their inclusion in the residual unit requires a vote to determine whether they would like to be included with non-professionals; and if they would like to be represented by the Union.
  3. Both employes are "temporary" employes because they lack an expectation of continued employment.
  4. The Union has not met its burden of proof to accrete the Electrical Inspector since the position was in existence at the time of the prior election petition; the parties excluded it from the residual unit; and the Union has not shown that the circumstances have changed from the time of the original exclusion.
  5. The Union has not established a "community of interest" between the residual employes and the two positions at issue.

DISCUSSION

The City has correctly argued that in a unit clarification proceeding the Commission will not alter the voluntarily agreed upon composition of a bargaining unit 2/ over the objection by one of the parties to said agreement unless:

1. The position(s) in dispute did not exist at the time of the agreement; 3/ or
2. The position(s) in dispute were voluntarily included or excluded from the unit because the

2/ See generally Milwaukee Board of School Directors, Dec. No. 16405-C (WERC, 1/76); West Allis - West Milwaukee, Dec. No. 16405 (WERC, 1/89); City of Cudahy, Dec. No. 12997 (WERC, 9/74).

3/ Dane County, Dec. No. 15696-A (WEFC, 12/88); Tomahawk Unified School District No. 1, Dec. No. 12483-A (WERC, 5/74).

parties agreed that the position(s) were or were not supervisory, confidential, etc. 4/ or

3. The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; 5/ or
4. The existing unit is repugnant to the Act. 6/

The City asserts that none of the above noted exceptions are present with respect to the Electrical Inspector because said position existed at the time the parties agreed to the unit's composition; it was not excluded on statutory grounds; there has been no material change in circumstances; and the existing unit is not repugnant to the Municipal Employment Relations Act. The Commission agrees. Contrary to the Union's assertions, the record establishes that the Electrical Inspector position was in existence on a full-time basis at the time of the prior WERC case. 7/ The position was excluded from the residual unit but not on the basis that it was or was not supervisory, confidential, etc. The Union has made no showing that said position has been impacted by changed circumstances which materially affected its unit status. 8/ Finally, neither party has made an argument that the existing unit is repugnant to MERA. In fact, the residual unit in Question was certified by the Commission on October 19, 1988. 9/

Because none of the above-noted exceptions are present, and because of the City's objection, the Commission will not alter the previously agreed upon composition of the residual bargaining unit by determining whether the position of Electrical Inspector belongs in or out of said unit. Having concluded that it is not appropriate to determine the merits of the parties dispute with respect to the Electrical Inspector position, we turn to the issue of whether the position of Code Enforcement Officer is appropriately included in the residual bargaining unit.

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- 4/ CESA #4, Dec. No. 14177-A (WERC, 7/80); City of Cudahy, Dec. Nos. 19451-A, 19452-A (WERC, 12/82); Dane County, Dec. No. 22976 (WERC, 10/85).
  - 5/ Manitowoc County, Dec. No. 13434 (WERC, 3/75); City of Milwaukee, Dec. No. 26019 (WERC; 5/89).
  - 6/ Waukesha County, Dec. No. 14830 (WERC, 8/76); Walworth County, Dec. No. 9394-A (WERC, 3/73).
  - 7/ City of Greenfield, Dec. No. 25646 (WERC, 8/88).
  - 8/ The only argument made by the Union in this regard was that the position had changed from part-time to full-time. However, as noted above, the record does not support a finding regarding same. Assuming arguendo that it did, this would not affect the position's unit status since the unit is comprised of "all regular full-time and regular part time . . . employes of the City. . ."
  - 9/ City of Greenfield, supra.



Alleged Independent Contractor Status

The test to be applied in determining whether an individual is an employe or an independent contractor is the "right of control" test. 10/ In general, an individual is an employe if the employer for whom the services are performed has the right to control the manner and means by which the result of the services is accomplished. 11/ Conversely, where the employer has control only as to result, the individual providing the service is regarded as an independent contractor. 12/ No one factor is determinative in deciding whether an individual is an employe or an independent contractor. The determination of the relationship between the employe and the employer depends on the particular facts of each case, and requires a weighing of individual factors, such as the manner in which the employe is paid, the benefits the employe receives, if any, the hours the employe works, the degree of supervision the employer exercises over the employe, and the entrepreneurial investment the employe has in the venture, if any. 13/ In School District of Bruce, Examiner Crowley described the characteristics of an independent contractor as follows:

The earmarks of an independent contractor are that there is usually an engagement in a venture involving a financial investment and an assumption of the risks involved in the undertaking; that profit and loss are dependent on the efficiency and ability of the independent contractor; that pay for goods or services is based on the result rather than solely on the time to reach the result; and that the independent contractor exercises independent judgment and initiative in determining when, where, and how to accomplish the job. 14/

In the instant case, the City furnishes almost all the equipment and supplies necessary for the Code Enforcement Officer to perform his work, 15/ and there is no financial investment on Formella's part and no risk of profit or loss dependent on his work performance. Formella cannot work for other employers while being employed by the City, which is contrary to most independent contractor arrangements. The job is performed in the City's offices during regular work hours (or out in the field when an inspection is required) and the number of hours worked are the same as other employes in the unit. The City pays Formella on an hourly basis like other unit employes and he is paid on a bi-weekly basis (also like other employes). The City withholds taxes, social security and pension contributions from Formella's paychecks. These factors support a conclusion that Formella is an employe.

The City contends that Formella's limited supervision and independent work schedule support a conclusion that he is an independent contractor. Supervision is an important factor in the right to control test, but it carries

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10/ Northern Pines Unified Services Center, Dec. No. 17590 (WERC, 2/80).

11/ Madison Metropolitan School District, Dec. No. 6746-E (WERC, 12/86).

12/ Id.

13/ Northern Pines Unified Services Center, Dec. No. 17590 (WERC, 2/80); Madison Metropolitan School District, Dec. No. 6746-E (WERC, 12/86).

14/ School District of Bruce, Dec. No. 20035-A (Crowley, 2/83).

15/ Formula uses his own vehicle for which the City provides a mileage reimbursement of approximately \$1600 a year. Tr. 14.

little weight under the facts of this case. The record indicates that the primary basis for calling this employe independent is that, when out in the field doing inspections, he maps his own route, and prioritizes his own inspections. However, the fact that Formella exercises independent judgment at all on his job is due more to the professional nature of his work rather than any independent contractor status. Formella exercises independent judgment in the performance of his tasks no more so than other professional employes already within the bargaining unit. Like these other unit employes, Formella occasionally receives directions from his supervisor, Mel Teska, and his work is determined, in part, on the basis of complaints and requests from the public and local government officials.

The critical factor here is the right to control the manner in which Formella performs his duties, rather than the actual exercise of that control. There is little doubt that the City has the right to control the manner in which Formella works. Formella has a supervisor (Mel Teska) employed by the City. At the beginning of his employment, Teska made it clear how Code Enforcement procedures were carried out in the City of Greenfield. As noted previously, Formella occasionally still receives directions from Teska, and may be required to attend meetings after his normal work day. Also as noted above, Formella has his own office provided by the City, uses City equipment and supplies in the performance of his duties, has full use of the secretarial staff, and has his own computer terminal supplied by the City. Since Formella receives most field referrals through either Teska or the secretarial staff, the City dictates, to some extent, how Formella actually works. Finally, the record indicates that Formella may be disciplined or discharged by the City. Thus, we conclude Formella is not an independent contractor.

The City argues, however, that Formella is a temporary employe who lacks an expectation of continued employment and, therefore, should not be included in the residual bargaining unit. The Commission disagrees. The City correctly contends that the Commission defines a temporary employe as "one who lacks an expectation of continued employment. . ." 16/ However, there is no persuasive evidence in the record to conclude that Formella lacks a reasonable expectation of continued employment. The City argues in its brief that Haag testified he was hired as a temporary employe, and since both Haag and Formella "are temporary employes, they have no expectation of continued employment and therefore cannot be included in a bargaining unit, even if they perform work related to other bargaining unit positions." The record, however, indicates that Haag has been employed "temporarily" for the past four years. Formella has not been guaranteed continued employment (few employes enjoy a guarantee of work), but the position of Code Enforcement officer has been included by ordinance, in the personnel roll of the City. 17/ This is consistent with the fact that Formella was told at the time of his interview that it was possible the position would become permanent.

There is no persuasive evidence in the record that the position is temporary. To the contrary, the record supports a finding that Formella could work for the City as long or longer than Haag has if he wants to or his work is satisfactory.

The City also argues that the Union has not established a "community of interest" between the residual employes and the Code Enforcement Officer. In Arrowhead United Teachers v. Employment Relations Comm., 116 Wis. 2d 580 (1984), the Supreme Court set forth the recognized standards for determining a community of interest:

16/ Manitowoc County, Dec. 15250-B (WERC, 9/77) at 3.

17/ Union Exhibit No. 6.

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 to 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 other 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. Id. at 591-592

As set forth in the Findings, and discussed above, the "community of interest" between the Code Enforcement Officer and the professional employees in the residual bargaining unit has been well established. The duties and skills of these employees are very similar, and in some instances, nearly identical. The similarity of wages, hours and working conditions is likewise nearly identical. All are supervised by Teska. They all work in the same limited office area in the City Hall, when not in the field. 18/ Based on the above, the Commission finds that the Code Enforcement officer shares a community of interest with the residual employees. However, assuming arguendo that the Code Enforcement Officer does not share a community of interest with the employees in question, this would not affect our decision. Residual units by their definition include all employees who are eligible for representation but not included in another bargaining unit or excluded by agreement of the parties.

Finally, the City argues that since Formula is a professional employee, he must be given an opportunity to determine his inclusion with nonprofessionals and representation by the Union. Section 111.70(4)(d)2.a. Stats., states:

"The Commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and non-professional employees, unless a majority of the professional employees vote for inclusion in the unit."

However, as noted by the Union, this question was already asked and answered by professional employees through the October 7, 1988 ballot in the prior case and, based on an affirmative answer, the residual professional/nonprofessional unit was certified on October 19, 1988. The inclusion of the Code Enforcement Officer in said unit does not have an impact on the Union's majority status and is consistent with that unit's description. Therefore, based on the above, the Commission finds that the statutory obligation imposed by Sec.

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18/ Tr. 72-74, 76-78, 80-81, 85-86.

111.70(4)(d)2.a., Stats., has been met and rejects this claim of the City.

Based on all of the above, the Commission concludes that the position of Code Enforcement Officer is occupied by a regular full-time municipal employe and is appropriately included within the residual bargaining unit.

Dated at Madison, Wisconsin this 9th day of July, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairman

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner