

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LEER DIVISION**

Involving Certain Employees of
CITY OF WATERLOO

Case 5
No. 57344
ME-3709

Decision No. 29807

Appearances:

Attorney Richard Thal, General Counsel, Wisconsin Professional Police Association, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

DeWitt, Stevens & Ross, by **Attorneys Bradley E. Fulton and William E. McCardell**, 2 East Mifflin Street, Suite 600, Madison, Wisconsin 53703-2865, appearing on behalf of the City of Waterloo.

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

On March 2, 1999 the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division filed a petition with the Wisconsin Employment Relations Commission seeking an election among certain employees of the City of Waterloo to determine whether the employees desired to be represented by WPPA for the purposes of collective bargaining.

No. 29807

After extensive discussions, WPPA and City were unable to stipulate to an election. The City, contrary to WPPA, contends that Utility employees are employed by the City and not by the Waterloo Water and Light Commission and thus should be included in the proposed City employee bargaining unit.

Hearing in the matter was thereafter held in Waterloo, Wisconsin on September 23, 1999, before Examiner Stuart Levitan of the Commission's staff. The parties filed written arguments, the last of which was received on December 2, 1999.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Wisconsin Professional Police Association//Law Enforcement Employee Relations Division, herein WPPA, is a labor organization with offices at 340 Coyier Lane, Madison, Wisconsin.

2. The City of Waterloo, herein the City, is a municipal employer with offices at 136 North Monroe Street, Waterloo, Wisconsin.

The City and the WPPA agree the proposed City employee unit includes the following positions, with their 1999 hourly wage: one Deputy Clerk/Treasurer, paid \$13.60, performing essentially all the City's bookkeeping functions under supervision of the City Clerk; one city hall secretary, paid \$10.00, performing normal clerical and support duties, reporting to the Deputy Clerk/Treasurer and the City Clerk; one police department secretary, performing normal clerical and support duties, reporting to the Police Chief, paid \$9.75, and four employees of the Department of Public Works (DPW) responsible for the maintenance and care of all public property, storm and sanitary sewers, parks and streets, under supervision of the Director of Public Works, and paid either \$11.56 or \$11.84.

3. In addition to the normal general government activities, the City has created the five-member Waterloo Water and Light Commission, herein the WWLC, with control and direction over all operations of water, electricity and sewer, pursuant to Secs. 66.068 and 66.077, Stats. The City has adopted Sec. 13.02(4) of its general ordinances, which provides as follows:

- (a) General. The Commission shall take entire charge and management of the Utility, appoint a manager and authorize such subordinates as may be necessary and fix their compensation, and shall supervise the operation of the Utility under the general control of the Council, pursuant to sec. 66.068, Wis. Stats.

The WWLC has appointed Glen Wiehert to serve as Utility Superintendent. In addition to the Superintendent, the Utility workforce, with their 1999 hourly wage, consists of: one foreman (a 15-year employee paid \$20.05); three linemen (a three-year employee paid \$14.69, a four-year employee paid \$16.53 and an eleven-year employee paid \$16.71); a waste water treatment plant operator (an eight-year employee paid \$17.12); a treatment plant assistant operator (a one-year employee paid \$10.40); an office manager (a nine-year employee paid \$13.39); a billing clerk/bookkeeper (a four-year employee paid \$11.10) and a part-time bookkeeper/payroll clerk (a 12-year employee paid \$12.07).

The Superintendent has power to hire and fire Utility employees without involvement by any City administrators or the Common Council and has done so.

The Superintendent and the WWLC set wages for the Utility employees. The Superintendent can make changes to Utility employees wages, hours and conditions of employment without consulting the Commission. It is the Waterloo Water and Light Commission that is identified as the payor on Utility employee paychecks.

Between May 1997 and May 1999, the Utility employees received the following approximate wage increases: foreman Roger Haseleu, \$8,700; lineman Robert Krief, \$9,600; lineman Tim Lins, \$13,000; lineman Barry Sorenson, \$11,000; treatment plant operator Dennis Hotmar, \$5,600; billing clerk Lois Leistico, \$2,800; part-time bookkeeper Lyrl Breikreutz, \$1,560. For the blue-collar utility employees, these wages represented increases of between 5 and 29 percent, at a time when the City employees identified in Finding of Fact 2 were receiving increases of approximately three to three and one-half percent.

There are no position descriptions for the Utility employees, although WWLC Commissioner/City Clerk Treasurer Holhaus and Utility Superintendent Wiehert are drafting them. Utility employees who are called in receive a minimum of two hours paid overtime; the DPW workers have no similar call-in benefit. The WWLC keeps leave accounts for the Utility employees apart from the accounts which the City maintains of non-Utility employees. The City DPW may on occasion require Utility employees and equipment to assist in an operation, which the City pays for by a transfer from the City to the WWLC.

Utility revenue comes exclusively from user charges for electricity, water and sewer, and various interest income accounts. The Utility does not receive any financial support funded through City property taxes. Water and electricity user charges are regulated by state statute and administrative activities of the Wisconsin Public Service Commission, while sewer rates, having been deregulated, are set by the WWLC itself. When Utility employees partake in training activities, the WWLC authorizes payment without City involvement.

While several major provisions of the City personnel handbook, including insurance and other conditions of employment, apply to Utility employees, the handbook does not include the hours of work for the Utility employees because the Utility Superintendent is still evaluating the issue of hours. The handbook also does not include details about any clothing and uniform allowance for the Utility employees because their allowances are distinct from those of the DPW employees. Common Council approval will be required for those distinctions to eventually become embodied in the handbook.

The Utility employees work in a building approximately a block from the rest of the City workforce. Holhaus, who has served either as Mayor, Clerk or on the WWLC for about 23 years, is unaware of any time that a DPW employee has become a Utility employee or vice versa, and is unaware of any policy regarding the carry-over of seniority or other aspects pertaining to an employee who would undertake such a move.

While the WWLC does not formally adopt an annual budget, the Superintendent and Utility foreman prepare a budget by which the WWLC establishes spending parameters. When spending on items costing less than \$10,000, the WWLC may act independently; for expenditures over that amount, it must obtain City approval.

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

CONCLUSIONS OF LAW

1. The Waterloo Water and Light Commission is the municipal employer within the meaning of Sec. 111.70(1)(j), Stats., of the Utility employees identified in Finding of Fact 3.

2. A question concerning representation within the meaning of Sec. 111.70(4)(d)3, Stats. exists within the following collective bargaining unit deemed appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.

All regular full-time and regular part-time employees of the City of Waterloo, excluding confidential, supervisory, managerial, executive and professional employees and employees with the power of arrest.

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

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the City of Waterloo, excluding confidential, supervisory, managerial, executive and professional employees and employees with the power of arrest, who were employed on January 6, 2000, 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 such employees voting desire to be represented by the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division for the purposes of collective bargaining with the City of Waterloo, or whether such employees desire not to be so represented by said labor organization.

Given under our hands and seal at the City of Madison, Wisconsin this 6th day of January, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

CITY OF WATERLOO

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

POSITIONS OF THE PARTIES

WPPA Initial Brief

In support of its position that the Utility employees should not be included in the proposed City employee bargaining unit, the WPPA asserts the Waterloo Water and Light Commission is the municipal employer of the Utility employees - not the City. Pursuant to WERC precedent, a municipal entity which independently controls its budget and controls its employees hours, wages and conditions of employment is a municipal employer, separate from the parent entity. The Waterloo Water and Light Commission controls its own budget and is statutorily required to fix the compensation levels of Utility employees. It is clear the WERC should treat the WWLC as an employer separate from the City.

The WWLC's control of its own budget is consistent with Sec. 66.068, Stats., which provides for such commissions to be independently funded and have independent control of its expenditures. Although the WWLC does not establish a formal yearly budget, its Superintendent and staff independently manage its funds.

The WWLC also controls the wages, hours and conditions of employment of the Utility employees, in accordance with the statutory mandate for a board of commissioners to "take entire charge and management of the utility." The statutes also give such board the sole and exclusive authority over the compensation of Utility employees.

Under statute and case law, the WWLC cannot delegate to the City the authority to negotiate over the Utility employees' compensation. Consistent with these requirements, the WWLC has independently controlled the Utility employees' hours and conditions of employment. Because the WWLC controls the employees' wages, hours and conditions of employment, the WERC should find the WWLC is the municipal employer separate and distinct from the City and order an election among the City employee bargaining unit proposed by WPPA.

City Initial Brief

In support of its position that the Utility employees are City employees who should be included in the proposed bargaining unit, the City asserts that by virtue of its ultimate control

of the terms and conditions of employment of the Utility employees, which is in addition to the substantial control the City otherwise exercises over the Utility, the City is the municipal employer of the Utility employees.

The City mandates which personnel policies are in place for the Utility employees. All City employees, including Utility employees, must follow the policies and procedures in the City's employee handbook. All employees are likewise provided with the same benefits such as health and life insurance, retirement plan, sick leave, vacation, holidays, etc. Many of the employment policies direct the Utility employees to City officials for assistance with issues that arise daily. Most importantly, none of the policies or benefits of the Utility employees can be changed unless approved by the City Council.

Further, the City is in the process of drafting a position description for all Utility employees, which will outline their duties and qualifications. The City will have the final word on the contents of this critical document.

In addition, the City exercises numerous other controls over the Utility itself, including setting the amount of sewer service charges, paying its bills, collecting payments in arrears, and acting as an appellate body for its decisions.

The City controls the Utility's purse, it controls the rates the Utility can charge, and, most importantly, it controls the terms and conditions of employment for all the Utility employees. This ultimate level of control and authority mandates a finding that the City is the municipal employer for the Utility employees.

Once the Commission finds that the City is the appropriate municipal employer, it must also find that the Utility employees have a substantial community of interest with the other City employees. This community of interest, combined with the mandate to avoid fragmentation, requires that the appropriate bargaining unit include the Utility employees.

WPPA Reply Brief

In further support of its position that the Utility employees should not be included in the bargaining unit, WPPA responds that the City errs in contending it controls the purse of the WWLC when in fact the Commission is independently funded from revenues that come directly from the public, particularly property owners in the City and neighboring towns.

The City errs in asserting it controls the rates the WWLC can charge, when in fact rate increases are controlled by statute and regulated by the Wisconsin Public Service Commission.

The City errs in claiming that it controls the terms and conditions of the Utility employees, when in fact the Utility management independently hires, fires and sets the wages of Utility employees. Further, there is no evidence that City employees have any right to transfer to the Utility.

Because the WWLC is the municipal employer of the Utility employees, the bargaining unit proposed by WPPA is an appropriate bargaining unit for an election.

City Reply Brief

In further support of its position that the Utility employees are City employees who should be included in the bargaining unit, the City responds that the WPPA errs in contending that the Utility employees have all been hired by the Utility rather than the City, when the record testimony only refers to one such employee. The WPPA's allegation is unsupported by the record.

The WPPA also errs in boldly asserting that the Utility employees have separate personnel records and practices, an allegation that is directly contradicted by the evidence in the record. The personnel practices of the Utility are mandated by the City.

The WPPA also relies on incredible testimony, particularly an unsubstantiated allegation that some representative of the City allegedly stated in a prior bargaining session that the Utility employees were employed by a separate employer. This testimony was simply not credible.

The WPPA relies on numerous allegations that are unsupported by the record. The WPPA had ample opportunity to present testimonial and other evidence; that it now relies on evidence unsupported by the record reveals the weakness of its position.

The WPPA also mischaracterizes the law relating to municipal employers by asserting that there are two factors of paramount significance. The WERC has expressly stated that control over terms of employment is the **only** factor that is of paramount significance. Here, the WWLC cannot spend more than \$10,000 without approval from the City Council and, most importantly, the Utility employees are governed by the same exact personnel policies as all other City employees.

The Utility employees should be included in the appropriate bargaining unit for an election because the City is the municipal employer of the Utility employees and the Utility employees share a sufficient community of interest with the other City employees.

DISCUSSION

Traditionally, in determining whether an entity is a municipal employer, separate and distinct from another, we have examined the following factors: an independent source of revenue, control over the budget, a requirement that approval be granted from another body to administer its responsibilities, rent or other payment to the parent authority for services provided to it, intermixing of personnel and transfer rights for employment vacancies among the entities, its creating statute and/or ordinance control over the employees' wages, hours and conditions of employment. Of all of these factors, the last has been of paramount significance. CITY OF NEW BERLIN (PUBLIC LIBRARY), DEC. NO. 13173-E (WERC, 2/96). Distilling these factors to their essence, the critical questions to be answered are whether the entity in question, in this case the Waterloo Water and Light Commission, exercises meaningful control over its budget and, most importantly, whether the Commission exercises meaningful control over employee wages, hours and conditions of employment. CITY OF COLUMBUS LIBRARY BOARD, DEC. NO. 29492 (WERC, 11/98).

Here, the City has little meaningful impact on the WWLC's budget. The Commission's revenues are not from City taxes, but rather from user fees set by state statute and administrative regulation, or set by the Commission itself.

Most importantly, it is the Utility Superintendent and the Commission who have clear authority – by statute, ordinance and practice – over the wages, hours and conditions of employment of the Department of Public Utility personnel. The City Clerk's testimony was explicit that the Utility employees' wages were set independently by the Commission, that the Utility Superintendent had exercised independent authority to fire and hire without any involvement by the City Council or City administrators. Although the City's Common Council retains the formal authority to review and approve certain elements of the personnel function, it is clear from the record that it is the WWLC which exercises meaningful control over the wages, hours and conditions of employment of Utility employees.

Given the foregoing, we conclude the Waterloo Water and Light Commission is the employer of the Utility employees. Thus, these employees are not included in the City employee bargaining unit sought by WPPA and these employees are not eligible to vote in the election we have directed in this decision.

Dated at Madison, Wisconsin this 6th day of January, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

