

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**JOHN DRIES**

Involving Certain Employees of

**CITY OF WEST BEND**

Case 38  
No. 62661  
ME-3931

**Decision No. 30830**

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**Appearances:**

**John Dries**, 6709 Glacier Drive, West Bend, Wisconsin 53090, appearing on his own behalf.

**Yingtao Ho**, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters "General" Local Union No. 200.

**Mary L. Schanning**, City Attorney, City of West Bend, 1115 South Main Street, West Bend, Wisconsin 53095, appearing on behalf of the City of West Bend.

**FINDINGS OF FACT, CONCLUSION OF LAW AND  
ORDER DISMISSING PETITION FOR ELECTION**

On August 22, 2003, John Dries, an employee of the City of West Bend, filed a petition with the Wisconsin Employment Relations Commission seeking an election pursuant to Sec. 111.70(4)(d)2.a., Stats., to determine whether the City employees assigned to the City Water Utility wished to continue to be represented by Teamsters "General" Local Union No. 200. The Water Utility employees in question are currently included in a broader unit of City employees.

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By letter dated September 5, 2003, the Commission advised the parties that the petition for election was supported by the requisite 30% showing of interest and asked the City and Teamsters whether they wished to stipulate to the election sought by Dries. By letter dated September 15, 2003, the City advised the Commission that it would not stipulate to the election because it believed the proposed Water Utility unit would fragment the City work force contrary to the intent of Sec. 111.70(4)(d)2.a., Stats. By letter dated October 2, 2003, Dries advised the Commission that he wished to pursue the petition and that he had contacted Operating Engineers Local 139 to determine whether Local 139 wished to represent the Water Utility employees. By letter dated October 22, 2003, Teamsters advised the Commission that it opposed a separate Water Utility unit but wished to be on the ballot if the Commission concluded such a unit was appropriate. By letter dated October 30, 2003, Operating Engineers advised the Commission that it wished to be on the ballot if the Commission concluded a Water Utility unit was appropriate.

Hearing on the petition was held on December 3, 2003, in West Bend, Wisconsin by Examiner Peter Davis. The parties filed post-hearing argument, the last of which was received January 26, 2004.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. The City of West Bend, herein the City, is a municipal employer having its offices in West Bend, Wisconsin. The City employs approximately 250 individuals in various capacities to provide services to its citizens.

2. Teamsters "General" Local Union No. 200, herein Teamsters, is a labor organization having its principal offices at 6200 West Bluemound Road, Milwaukee, Wisconsin. Since 1969, Teamsters have served as the collective bargaining representative for a bargaining unit of City employees presently described in the parties' 2002-2003 contract as:

. . . all general employees in the following Departments: Public Works, Divisions of 1) Streets and 2) Sanitation; Water Utility; Sewer Utility; Building Maintenance; Vehicle Maintenance; and Park, Recreation & Forestry . . .

There are currently 48 employees in the Teamsters' unit including 13 Water Utility employees, 9 Streets employees, eight Parks employees, seven Sanitation employees, 4 Sewer employees, 4 Building Maintenance employees and 3 Vehicle Maintenance employees.

In addition to the Teamsters' unit, there are the following five bargaining units of City employees: (1) a law enforcement employee unit of 41 employees; 2) a law enforcement supervisors unit of 15 employees; (3) a clerical/dispatcher unit of 13 employees; (4) a firefighter unit of 35 employees; and (5) an engineering technician unit of 10 employees.

3. The Water Utility employees have a community of interest with other employees in the Teamsters' unit due to their shared purpose of providing and maintaining the City's infrastructure and equipment.

4. The Water Utility employees have common duties and skills with other employees in the Teamsters' unit.

5. The Water Utility employees have common wages, hours and working conditions with other employees in the Teamsters' unit.

6. The Water Utility employees have direct supervision that is separate from other employees in the Teamsters' unit.

7. The Water Utility employees share a common workplace with other employees in the Teamsters' unit.

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

### **CONCLUSION OF LAW**

A collective bargaining unit consisting of all regular full-time and regular part-time employees of the City of West Bend Water Utility is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

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

**ORDER DISMISSING PETITION FOR ELECTION**

The petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of March, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER DISMISSING PETITION FOR ELECTION**

**DISCUSSION**

The issue before us is whether the Water Utility unit sought by Dries and opposed by the City and Teamsters is an appropriate bargaining unit within which to conduct an election. In essence, Dries seeks to sever Water Utility employees from a long existing collective bargaining unit.

Section 111.70(4)(d)2.a., Stats., provides in pertinent part:

The commission shall determine the appropriate bargaining unit for the purposes of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a 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 groups constitute a collective bargaining unit.

In a severance petition, as in any other election petition, the Commission must decide whether the petitioned-for unit is “appropriate.” When making this determination, we measure the facts presented by the parties against the statutory language of Sec. 111.70(4)(d)2.a., Stats. We use the following factors as interpretive guides to the statute:

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 share 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.

ARROWHEAD UNITED TEACHERS V. WERC, 116 WIS. 2D 580 (1984).

We have used the phrase “community of interest” as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase “community of interest” as a means of determining whether employees share similar interests, usually – though not necessarily – limited to those interests reflected in Factors 2-5. This definitional duality is long standing and has received the approval of the Wisconsin Supreme Court. ARROWHEAD UNITED TEACHERS V. WERC, SUPRA.

Factor 6 reflects our statutory obligation under Sec. 111.70(4)(d)2.a., Stats., to “avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force.”

Factor 7 – (bargaining history) involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91).

It is well established that, within the factual context of each case, not all criteria deserve the same weight and a single criterion or a combination of criteria listed above may be determinative. See, e.g., MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NOS. 20836-A and 21200 (WERC, 11/83) (common purpose); MARINETTE SCHOOL DISTRICT, SUPRA (similar interests); COLUMBUS SCHOOL DISTRICT, DEC. NO. 17259 (WERC, 9/79) (fragmentation); LODI JOINT SCHOOL DISTRICT, DEC. NO. 16667 (WERC, 11/78) (bargaining history).

In considering a petition for severance from an existing unit, especially one of long standing duration, factors 6 and 7 (fragmentation and bargaining history) weigh heavily against the petitioned-for unit and are nearly always dispositive. In light of this precedent and the stable bargaining relationship of more than 30 years in the existing Teamsters’ unit, we conclude that the Water Utility unit sought by Dries is not an “appropriate unit.” Further, even if Factors 6 and 7 did not so definitively support our conclusion, we note that of the remaining factors, all except Factor 4 (separate supervision) also support our outcome.

Thus, the Water Utility employees share a common workplace (Factor 5) with other Teamsters’ unit employees -- both in terms of where they report at the start of a shift and the potential to work throughout the City during the shift. They share common hours of work,

wages and fringe benefits. (Factor 3). In terms of Factor 2 (duties and skills), the qualifications to be hired or transfer into a Water Utility job are the same as for other Teamsters' unit positions (high school education and some mechanical aptitude). While Water Utility employees ultimately need to acquire a certification, the same is true for some Sewer Utility employees. The physical, mechanical, and mental skills needed by Water Utility employees (ability to operate and maintain equipment and ability to monitor systems and keep records) are shared by other employees in the Teamsters' unit as well. Indeed, when needed, Water Utility employees help other unit employees perform necessary work and vice-versa. Thus, even if viewed solely from a "community of interest" perspective, a separate Water Utility unit would not be warranted.

We acknowledge that the Water Utility employees do not feel that their interests are being adequately met within the confines of the Teamsters' unit. However, the Legislature's directive that we "avoid fragmentation" inherently produces larger units within which some diversity of concerns is to be expected. Further, we note that the Water Utility employees in Coordinator positions have a wage rate \$2.50-\$3.00 per hour higher than any other unit employees and that Water Utility employees are the largest single numerical group within the Teamsters' unit and an ever increasing percentage of the overall unit as well. Thus, it can be argued that the interests of Utility employees have been and will continue to be met through the collective bargaining process.

Given all of the foregoing, we have dismissed the election petition.

Dated at Madison, Wisconsin, this 2nd day of March, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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