

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**  
Involving Certain Employees of  
**CITY OF WATERTOWN**

Case 65  
No. 63972  
ME-3995

**Decision No. 31268**

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**Appearances:**

**Samuel Gieryn** and **Michael J. Wilson**, Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, on behalf of Wisconsin Council 40, AFSCME, AFL-CIO

**James R. Scott**, Lindner & Marsack, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, on behalf of the City of Watertown.

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

On September 7, 2004, Wisconsin Council 40, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission seeking an election in a predominantly blue collar bargaining unit of employees in the City of Watertown's Water and Wastewater Departments to determine whether said employees wish to be represented for the purposes of collective bargaining.

The City opposes the petition because it believes the proposed bargaining unit is inappropriate.

Hearing was held in Watertown, Wisconsin on November 3, 2004 before Examiner Peter G. Davis. The parties filed post-hearing argument until December 28, 2004. The record was closed on January 26, 2005 when Teamsters Local 695, the collective bargaining

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representative since 1962 of a blue collar employee unit of City streets, parks, sanitation and maintenance employees, advised the Commission that it took no position on the appropriateness of the unit sought by AFSCME and did not wish to be on the ballot if the Commission directed an election in the unit AFSCME seeks.

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 Watertown, herein the City, is a municipal employer. The City has approximately 145 municipal employees who are eligible for representation by a labor organization-approximately, 100 of whom are currently included in four existing bargaining units: (1) 47 employees in the blue collar streets, parks, sanitation and maintenance unit; (2) 28 employees in a law enforcement unit; (3) 18 employees in a fire fighter unit; and (4) eight employees in a dispatch unit.

2. Wisconsin Council 40, AFSCME, AFL-CIO, herein AFSCME, is a labor organization. The Water and Wastewater Departments unit that AFSCME seeks to represent consist of 18 employees: 16 blue collar employees and two white collar employees. The unit excludes the approximately 25 remaining City employees (predominantly white collar) who are eligible for representation.

3. In 1975, the City and AFSCME stipulated to a Wisconsin Employment Relations Commission conducted election in which AFSCME became the collective bargaining representative of a mixed blue collar/white collar unit of City employees that included certain positions/employees that AFSCME does not now seek to represent as well as the employees of the now Wastewater Department, but did not include employees of the City Water Department who were then employed by a separate employer, i.e., the Water Commission. AFSCME's representation of this bargaining unit continued until 1977 when the employees voted to return to unrepresented status.

4. In 1987, AFSCME petitioned to represent a bargaining unit of all unrepresented City blue collar employees, including the blue collar employees in the Waste Water Department and certain custodians. The petition did not seek to represent the Water Department employees who were then still employed by the Water Commission. AFSCME subsequently amended its petition to request an alternative unit in the event the Wisconsin Employment Relations Commission concluded that the initially-requested unit was inappropriate. The alternative unit proposed comprised all remaining unrepresented City employees, a so-called "residual unit." The Commission concluded that a second unit of blue collar employees would result in undue fragmentation of bargaining units and thus was inappropriate, but also concluded that an overall residual unit was appropriate and directed an election in that unit. The employees voted to remain unrepresented.

5. Between 1987 and the filing of the instant petition, the City and the Teamsters incorporated all blue collar employees other than those working in the Water and Wastewater Departments into the Teamsters bargaining unit, including certain custodians who had been part of the residual unit established in the 1987 Commission decision.

6. In 2002, the Water Commission ceased to exist.

7. The blue collar employees in the Water and Waste Water Departments share common purpose and similar wages, hours, fringe benefits as well as some equipment, duties, skills, and qualifications, and occasionally work locations with employees in the blue collar Teamsters bargaining unit. Thus those blue collar Water and Wastewater Department employees appropriately could be included in that unit. However, neither the City nor the Teamsters have sought to include the petitioned-for employees in the existing blue collar unit.

8. The wages and fringe benefits of the Water and Wastewater Department employees are established by the same City Common Council Payroll Resolution that establishes the wages and fringe benefits of other unrepresented employees.

9. The employees in the Water and Waste Water Departments have common supervision but somewhat separate work locations. They are supervised by Paul Lange, who directs both departments and only those departments, and who reports directly to the Mayor. Mr. Lange develops a budget for the Water and Wastewater Departments that is separate from the budget developed for the departments that comprise employees in the Teamsters bargaining unit. The employees in the Water and Waste Water Departments share a common purpose and sufficiently distinct community of interest with each other to comprise an appropriate bargaining unit separate from either the existing Teamsters unit or a residual unit of all remaining City employees.

10. Under the circumstances present here, the petitioned-for Water and Wastewater Departments employee unit would not unduly fragment the City's work force.

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

### **CONCLUSION OF LAW**

A bargaining unit of all regular full-time and regular part-time employees of the City of Watertown Water and Wastewater Departments excluding supervisors and confidential, managerial, executive and professional employees is an appropriate unit within the meaning of Sec. 111.70(4)(d) 2. Stats.

Based on the above and foregoing Findings of Fact and Conclusion 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 45 days of the date of this Direction among all regular full-time and regular part-time employees of the City of Watertown Water and Wastewater Departments, excluding supervisors and confidential, managerial, executive and professional employees, who were employed on March 4, 2005, except such employees who subsequently quit their employment or are discharged for cause prior to the election, for the purpose of determining whether a majority of the employees voting wish to be represented by Wisconsin Council 40, AFSCME, AFL-CIO for the purposes of collective bargaining with the City of Watertown or not to be so represented.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of March, 2005.

**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

**CITY OF WATERTOWN**

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

In this case, the City argues that the petitioned-for employees (at least those who are blue-collar) belong with the existing Teamsters DPW bargaining unit. AFSCME argues that, even if the Teamsters unit would be an appropriate unit for these employees, the departmental unit AFSCME seeks (which would include both blue and white collar employees) is also appropriate. While the competing policies make it a very close question, we agree with AFSCME and thus have directed an election in the petitioned-for departmental 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.

When deciding whether the petitioned-for unit is “appropriate,” we measure the facts against the statutory language of Sec. 111.70(4)(d) 2.a., Stats, using 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).

It is also well-established that more than one bargaining unit may be appropriate for the employees at issue in a given situation, and that the Commission will direct an election in a petitioned-for bargaining unit as long as it is an appropriate unit, even if another unit placement may also be appropriate or even more appropriate. WAUKESHA COUNTY TECHNICAL COLLEGE, DEC. NO. 11076-C (WERC, 2/99). The “community of interest” criteria reflected in Factors 1 through 5 are designed to group employees coherently to facilitate bargaining that addresses a reasonably confined set of needs and issues. On the other hand, the statute recognizes that the efficiencies thus gained by grouping similar positions into units could be lost if the concept of similarity is interpreted too narrowly, so that the number of units proliferates and the public employer must expend too much time and too many resources negotiating numerous separate contracts. The statute (incorporated into Factor 6) addresses this problem by directing the Commission to “avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the municipal work force.” The Commission must balance these competing policies under the unique facts of each situation

in order to effectuate employees' rights to seek union representation without unreasonably consuming a municipality's resources.

In the instant case, there is no real question that the petitioned-for employees have a community of interest with the existing DPW blue collar unit and that said unit placement would be an appropriate unit. Rather, the question is whether the separate departmental unit AFSCME seeks is also appropriate. A community of interest is somewhat inherent in a group of employees who work together in two municipal departments providing services related to the same municipal goals: a safe, adequate and environmentally sound water supply and waste water disposal system. Though these employees interact to some extent with the City's DPW employees, they largely work with each other, filling job classifications whose duties and skills, while related on some level to those of the DPW employees, are not the same. Only one job title is shared between the Teamsters unit and the proposed AFSCME unit, i.e., custodian. The Water and Wastewater employees are housed in physically separate locations from those of any members of the Teamsters unit and do not share break rooms, meeting rooms, or any social or business space. The blue collar Water and Wastewater positions are generally filled from within or from outside the City, and trade-specific experience is desirable for many of the positions. By the same token, few if any Water and Wastewater employees have transferred to positions within the Teamsters unit. As departmental units, they are managed and supervised by an individual (Mr. Lange) who has no other management responsibilities, and their departments' budgets are separate elements in the City's budget from that governing any of the departments within the Teamsters unit's work jurisdiction. Their pay and benefits are not identical to those of the classifications within the Teamsters unit, although the differences are not substantial. Like other departmental units, we conclude that the Water and Wastewater employees share a cohesive community of interest with each other sufficiently distinct to create a separate community of interest, albeit they may also have a community of interest with the Teamsters' unit.

As to Factor 7, bargaining history, we note that the Wastewater employees were once part of a residual blue collar/white collar bargaining unit. While they were employees of the Water Commission, the Water Department employees had no formal relationship with the City as to how their wages, hours and conditions of employment were established. At present, the wages and fringe benefits of the Water and Wastewater employees are established as part of the same City Common Council Payroll Resolution that sets the wages and fringe benefits of other unrepresented employees. This factor does not weigh in favor of the proposed unit, as the facts do not suggest any practice of the City treating these employees separately from other unrepresented employees for purposes of determining the details of their employment.

As to Factor 6, potential for fragmentation, the Findings of Fact reflect that the Commission has dealt with some of these employees in the past and found this factor pivotal. In 1987 the Commission concluded that a bargaining unit of all unrepresented blue collar City employees would result in undue fragmentation of bargaining units and thus was inappropriate. The central question before us now is whether that decision (and the anti-fragmentation factor)

should control the instant case. Assuming the 1987 decision was correct on its facts, 1/ a careful review of the differences between the two factual contexts leads us to conclude that the instant petition requires a different result.

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*1/ We are not entirely convinced that the 1987 decision was correct. We note that the petitioning union in that case had sought a unit of all unrepresented blue collar employees – in effect, a residual unit of blue collar employees. Such a unit might not be appropriate in some circumstances (for example, where employees left out were so few and diverse as to be incapable of engaging in effectual collective bargaining), the operative facts in 1987 suggest that the body of white collar employees who would have remained unrepresented, if the Commission had permitted a residual blue collar unit, would have been both sufficiently numerous and sufficiently integrated to have comprised a substantial and effective unit unto themselves had they decided to seek representation at some point in the future.*

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First, we note that the Water Department employees, who comprise a substantial portion of the combined Water/Wastewater unit AFSCME now seeks, were not City employees until 2002. While not of overwhelming significance, this fact detracts from the relative weight of the anti-fragmentation concerns, since it renders the petitioned-for unit numerically more substantial and internally more cohesive (all of the employees are directed by the same supervisor and covered by the same budget segment) than the unit that the Commission found inappropriate in 1987.

A second and related difference is that, unlike the situation in 1987, AFSCME seeks a departmental unit, one of the unit structures statutorily recognized as appropriate unless overcome by anti-fragmentation concerns. See Sec. 111.70 (4)(d)(2)a, set forth above. In this connection, we note that the decision primarily relied upon by the City in this case, CITY OF OCONOMOWOC, DEC. NOS. 6982-A and 7170-B (WERC, 10/89), involved a city's petition to accrete water utility employees to an existing DPW unit that already included the city's wastewater employees. In that quite different situation, the Commission denied the intervening union's request to create a separate unit containing only water utility employees. 2/

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*2/ As noted below, the OCONOMOWOC decision is also distinguishable on the significant ground that it was a case initiated by the City in which the City was seeking to accrete the former Water Utility employees to the existing DPW bargaining unit. Further, nearly all of the cases upon which the Commission relied in OCONOMOWOC to deny the separate Water Utility bargaining unit sought by the union arose in a severance context, i.e., one in which employees who were already in a broader blue collar unit were seeking to remove themselves and constitute a separate unit. As the Commission has stated in a recent decision dismissing a petition to sever a municipality's Water Utility employees, "In considering a petition for severance from an existing unit, especially one of longstanding duration, factors 6 and 7 (fragmentation and bargaining history) weigh heavily against the petitioned-for unit and are nearly always dispositive." CITY OF WEST BEND, DEC. NO. 30830 (3/04) at 6. Dismissing a severance petition, unlike dismissing an election petition like the one at issue here, does not deprive the petitioning employees of an opportunity for union representation.*

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Finally, we note that, unlike the situation in 1987, AFSCME has expressed no interest in representing a unit comprising all remaining unrepresented City employees. It is apparent from the record that those not-petitioned for employees, who by and large hold white collar clerical and administrative positions, are not only divergent in interests from the primarily blue collar Water and Wastewater employees, but would likely outnumber the petitioned-for employees in a combined election. Cf. CITY OF ELKHORN, DEC. NO. 24790 (WERC, 8/87) at 10 (in refusing to direct an election in a unit smaller than all remaining unrepresented employees, the Commission considered the fact that “it may be that numerically the [petitioned for] employees will constitute a substantial majority of the employees in the residual unit.”) By the same token, in 1987 the Teamsters as well as the City were actively proposing to accrete the remaining blue collar employees into the Teamsters unit, although they sought to do so by the inappropriate mechanism of an accretion election. Cf. CITY OF OCONOMOWOC, *supra* (as noted earlier, the city had filed a petition to accrete the Water Utility employees to the existing blue collar unit). In the instant case, the Teamsters, though given the opportunity, expressed no interest in representing any of the petitioned-for employees, and there is no indication that the City has proposed to accrete them. Accordingly, dismissing the instant petition leaves the petitioned-for employees without any foreseeable means of effectuating their right to choose union representation.

While none of the foregoing considerations is necessarily dispositive on its own, taken together they outweigh the anti-fragmentation concerns that animated the Commission’s 1987 decision. We agree with the City that there is no anti-fragmentation rule of thumb as to the number of bargaining units that would be deemed “practicable” for a City of any given size. On the contrary, the statute leaves such determinations to the Commission upon a consideration of all the circumstances. We note, however, that a potential of eight bargaining units (assuming the maximum potential number) is not beyond normal parameters for an employer with a work force the size of Watertown’s. 3/

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3/ We agree with AFSCME that there are currently only four bargaining units because the Library employees are employed by the Library Board. WATERTOWN PUBLIC LIBRARY, DEC. NO. 30947-A (WERC, 8/04). Because craft and professional employees have the statutory right to have their own bargaining unit, there is the somewhat unlikely potential of eight City bargaining units (the existing Teamsters unit, the existing three protective services-related units, the Water/Wastewater unit and three potential units of presently unrepresented City employees).

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For the foregoing reasons, we have granted AFSCME's petition for an election in a bargaining unit of all eligible Water and Wastewater Departments employees.

Dated at Madison, Wisconsin, this 4th day of March, 2005.

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

