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In the Matter of the Petition of :  
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WISCONSIN COUNCIL OF COUNTY AND :  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO :  
 :  
Involving Certain Employes of :  
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VILLAGE OF NIAGARA :  
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WISCONSIN COUNCIL OF COUNTY AND :  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO :  
:  
Involving Certain Employees of :  
:  
VILLAGE OF NIAGARA :  
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That, pursuant to a Direction of Election issued by it, the Wisconsin Employment Relations Commission conducted a representation election on February 4, 1974, among all police officers in the employ of the Village of Niagara, Wisconsin, excluding the Marshal; that at said election, of the six employees claimed eligible to vote, five cast ballots, two of the ballots were challenged and the three remaining ballots counted indicated that the employees casting same desired to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining; and that thereafter and on March 8, 1974, the Commission certified said Union as the collective bargaining representative for the law enforcement personnel in said unit; that, although during the course of the hearing on the petition, the parties had agreed to the inclusion of all police officers in the employ of the Municipal Employer, prior to the Direction of Election the Municipal Employer, in writing, contended that the three part-time officers should be excluded from the unit on the basis that they were casual employees since said officers could refuse to report for work when asked; that in support of its position the Village Marshal executed and filed an affidavit with the Commission indicating the number of hours worked during the year from February 1, 1973, through January 31, 1974; that in its Direction of Election the Commission indicated that the Municipal Employer could challenge the ballots cast by any part-time officer appearing to vote; that two of the three part-time officers appeared to vote and the two ballots challenged were those cast by the two part-time officers; and that subsequently, following the issuance of the Certification, pursuant to the request of the Commission, the Marshal filed a supplemental affidavit indicating the number of hours worked by the three part-time officers in the 24 bi-weekly pay periods in the 12-month period involved; that the Union filed a letter contending that the part-time officers should be included in the unit; and the Commission being fully advised in the premises, and being satisfied that the part-time officers should be included in the unit;

No. 12446-A

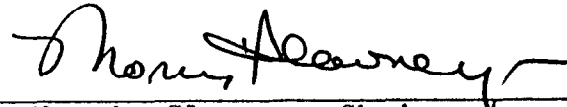
ORDER

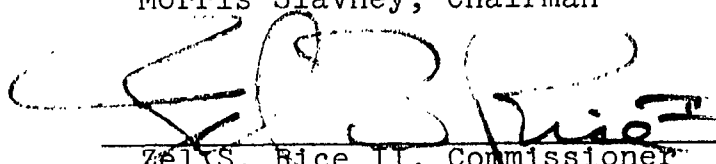
It is determined that the appropriate collective bargaining unit of law enforcement personnel in the employ of the Village of Niagara, Wisconsin, consists of all police officers in the employ of the Village of Niagara, excluding the Marshal.

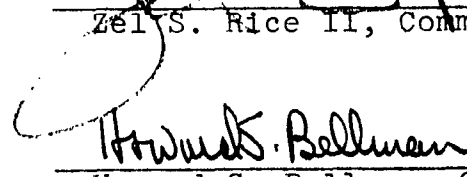
Given under our hands and seal at the  
City of Madison, Wisconsin, this 24<sup>th</sup>  
day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted among all police officers employed by the Village of Niagara, Wisconsin, hereinafter referred to as the Municipal Employer. During the course of the hearing on the petition, held on November 20, 1973, the parties agreed that the three full-time police officers and the three part-time police officers were to be included in the unit. An issue arose as to the inclusion of the Marshal in the unit. On November 29, 1973, the Commission received a communication from Counsel for the Municipal Employer, contending that facts of which he was unaware during the course of the hearing were subsequently disclosed to him to the affect that the part-time officers were under no obligation to report to work as requested, and their reporting for duty was discretionary, and, therefore, the Municipal Employer questioned the inclusion of the part-time officers in the unit. On January 30, 1974, the Commission issued its Direction directing that an election be conducted among all police officers in the employ of the Municipal Employer, excluding the Marshal. The determination to exclude the Marshal was based upon the evidence adduced during the hearing that he was a supervisory employe and the only individual in charge of the Police Department of the Municipal Employer. In said Direction, as a result of the correspondence previously received from Counsel for the Municipal Employer, the Commission indicated that the ballots of the part-time officers could be challenged if said part-time officers appeared to vote.

The election was conducted on February 4, 1974. All full-time officers voted. Two of the part-time officers appeared at the balloting, and their ballots were challenged by the Municipal Employer's observer. The result of the tally of ballots disclosed that of the six employees claimed eligible to vote, five cast ballots, two of the ballots of the part-time officers were challenged, three of the ballots were valid, and said three ballots indicated a choice to be represented by AFSCME. Thereafter and on February 6, 1974, Counsel for the Municipal Employer requested the Commission to conduct a hearing for the purpose of determining whether the part-time officers would be included in the unit. On February 8, 1974, the Commission, by letter, suggested that said Counsel prepare an affidavit setting forth the dates and hours worked by the part-time officers, as well as the dates on which said part-time officers were called but refused to work, and in said letter the Commission advised said Counsel to forward a copy of said affidavit to AFSCME. On February 27, 1974, the Commission received an affidavit executed by the Village Marshal indicating that during the 12-month period from February 1, 1973, through February 1, 1974, the part-time officers worked a total of the following hours:

Robert Broullire	-----	665 hours
Louis DePas	-----	321 hours
Raymond Outcalt, Jr.	-----	276 hours

In said affidavit the Marshal also indicated that the above named part-time officers on occasions had refused or were unable to work because they held full-time jobs elsewhere but that, however, he had no written records of such occasions. On March 5, 1974, the Commission

directed a letter to the representative of AFSCME, granting AFSCME until March 15, 1974, to present a position paper with regard to the Municipal Employer's claim that the part-time employees should not be included in the unit. On March 8, 1974, the Commission issued its Certification of Representatives wherein it certified AFSCME as the bargaining representative for the employees employed in the unit of "all police officers, excluding the Marshal, in the employ of the Village of Niagara, Wisconsin." In said Certification it indicated that although the ballots of the part-time officers, which were challenged, did not affect the results of the election, the Commission would subsequently make a determination as to the exclusion of part-time officers in the unit.

On March 14, 1974, the Commission received a letter from AFSCME, over the signature of its representative, contending that the part-time officers should be included in the unit on the basis (1) that the parties originally had stipulated to their inclusion, and (2) that while the part-time officers could refuse to accept an assignment, the hours worked by them indicated that they were more than casual employees and were, in fact, part-time employees having an interest in wages, hours and working conditions. On March 19, 1974, the Commission received a supplemental affidavit from the Village Marshal specifying the exact number of hours worked by the three part-time officers in bi-weekly periods from February 1, 1973, through January 31, 1974. Such affidavit indicates that during said one-year period, consisting of 24 bi-weekly payroll periods, Robert Broullire worked 21 of said periods and that the hours of work during these bi-weekly periods ranged from 4 to 72 hours, and actually worked 665 hours during the year period.

Ray Outcalt, Jr. worked 21 of said periods and the hours of work during these bi-weekly periods ranged from 8 to 57 1/2 hours and actually worked 476 hours during the year period.

Louis DePas worked 19 of said periods and the hours of work during these bi-weekly periods ranged from 3 to 46 hours and actually worked 322 hours during the year period.

It is significant that no other part-time officers are employed by the Municipal Employer, and while the part-time officers may turn down work, it is apparent from the frequency of their employment through the year and the number of hours worked by them, that the part-time employees have a sufficient interest in the wages, hours and working conditions affecting police officers in the employ of the Municipal Employer that said employees are properly included in the bargaining unit. Their employment is more than casual, and it is further significant that in 15 of the pay periods all three of the part-time employees were employed, while in only two pay periods only one of the part-time officers was employed. In the seven remaining pay periods two of the part-time officers were employed. The fact that the part-time officers may not work every pay period, under the circumstances herein, does not convince the Commission that they are not regular part-time employees, and despite the fact that they have the option not to work, it is apparent to the Commission that if they have so exercised said option, it has been on infrequent occasions. While in his affidavit the Marshal indicates that he has no written records of the number of occasions

on which the part-time officers have refused to work, at the same time it may be that work was not proffered to said part-time officers during the various pay periods. As indicated previously since the challenged ballots do not affect the results of the election, we see no reason to open and count said challenged ballots, and we conclude that the part-time officers involved are included in the certified bargaining unit.

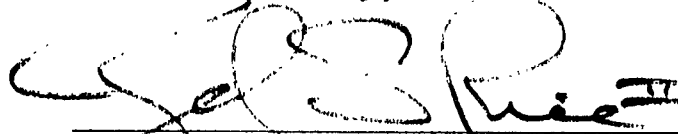
Dated at Madison, Wisconsin, this 24<sup>th</sup> day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner



Howard S. Bellman, Commissioner