

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
GENERAL DRIVERS, DAIRY EMPLOYEES	:	Case II
AND HELPERS LOCAL UNION NO. 579	:	No. 18744 ME-1148
	:	Decision No. 13442-A
Involving Certain Employes of	:	
	:	
CITY OF MILTON	:	
	:	

Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller, Levy and Brueggeman, Attorneys at Law, 788 North Jefferson Street, Milwaukee, WI 53202, by Mr. Frederick Perillo, and, Mr. Brendan F. Kaiser, Secretary-Treasurer, General Drivers, Dairy Employees and Helpers Local Union No. 579, 2214 Center Avenue, Janesville, WI 53545, for the Union.

Roethe, Buhrow, Roethe and Pope, Attorneys at Law, 120 Parkview Drive, Milton, WI 53563, by Mr. Jeffrey T. Roethe, for the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

General Drivers, Dairy Employees and Helpers Local Union No. 579 having on November 26, 1982 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among part-time police officers employed by the City of Milton to determine whether said employes desire to be represented for the purpose of collective bargaining by said Union; and hearing in the matter having been conducted in Milton, Wisconsin on January 11, 1983 by Douglas V. Knudson, an Examiner on the staff of the Commission; and the record having been closed on February 22, 1983 upon the receipt of the stenographic transcript of the proceedings and of the written briefs of the parties; and the Commission having considered the evidence and the arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That General Drivers, Dairy Employees and Helpers Local Union No. 579, hereinafter referred to as the Union, is a labor organization with offices at 2214 Center Avenue, Janesville, Wisconsin.

2. That the City of Milton, hereinafter referred to as the City, is a municipal employer with offices at City Hall, 116 Parkview Drive, Milton, Wisconsin, and, among its various governmental functions, operates a police department wherein individuals occupying the following classifications are employed:

<u>Classification</u>	<u>Number of Employes</u>
Chief of Police	1
Sergeant	1
Police Officer (full-time)	3
Police Officer (part-time)	5

3. That, following an election conducted by the Commission, the Union was certified on April 23, 1975 as the exclusive collective bargaining representative of "all sworn full-time Police Officers in the employ of the City of Milton, excluding office and clerical employes, supervisory employes, special police officers and all other employes."

4. That during the hearing the parties agreed to the following:

(1) That, if any of the part-time police officers are found to be employed on a regular part-time basis, said officers will vote by secret ballot in an election conducted by the Commission to determine whether they desire to be represented by the Union;

(2) That, if a majority of such employees voting vote for representation, the regular part-time officers will become a part of the existing bargaining unit of full-time police officers; and,

(3) That if such a merger occurs, the terms and conditions of any existing collective bargaining agreement covering the full-time police officers will not be applied automatically to the part-time officers, unless collective bargaining produces such a result.

5. That the City currently employes Robert Cummings, Marjorie Sellers, Thomas Kunkel and Stanley Rick Manthey as part-time police officers; that Mark Manthei, who had been employed as a part-time police officer, accepted other employment shortly before the hearing and was to be replaced by Pat Kelley, who was scheduled to start employment on the day of the hearing; that the Union contends the five part-time officers are regularly employed and have an expectation of future employment; that the City contends the part-time officers are casual employes rather than regular part-time; that the part-time officers have the power of arrest and perform duties similar to those performed by the full-time officers; that on a monthly basis the Chief prepares a schedule of work for the full-time officers and then prepares a list of shifts not assigned to full-time officers, which list is posted in the police department office; that the part-time officers sign up for the shifts on the list, which they are willing to work, by writing their initials beside the shifts; that such sign-up is on a first-come basis and is strictly on a voluntary basis, since part-time officers have never been assigned to available shifts with the annual exception of the Fourth of July weekend when all officers, both full-time and part-time, are scheduled to work; that in the past there have been occasions when no part-time officer signed for available shifts, in which instances the shift has been covered by the Chief, assigned to a full-time officer, or, not worked by anyone; that at times part-time officers have been called to work available shifts and have declined such work; that the part-time officers neither have any guarantee of hours which will be available to them nor any expectancy of working a specific shift on a regular basis, but that after an officer has signed up for a shift, the officer is expected to either work the shift or obtain a replacement; that the shifts available to the part-time officers usually occur on Friday evenings and Saturdays, although other shifts are available due to absences of full-time officers for such reasons as vacations, holidays, sick leave, military leave or training programs; that part-time officers were utilized extensively both during an approximate three month sick leave of the Sergeant in June, July and August of 1982 and during the period of April through July of 1982 due to a difficulty in obtaining a permanent replacement for a full-time officer who was terminated; that police officers also are employed for special events by the local school district by initialling a posted list of such events; that for such work an officer receives a flat hourly rate for which the City is reimbursed by the school district; that full-time officers sign up for most of such work; that the part-time officers began their employment with the City as follows, Cummings in October 1980, Sellers in December 1981, Kunkel on April 27, 1982, and, Manthey in May 1982; that during calendar year 1982 those part-time officers worked the following hours for the City, excluding school district events:

<u>Employee</u>	<u>Hours Worked for City</u>	<u>Average Hours Worked per Week</u>	<u>Number of Weeks Worked In</u>	<u>Average Hours Worked per Week Sept. thru Dec.</u>
Cummings	236.25	4.54	21 of 52	2.76
Sellers	301.25	5.79	20 of 52	0.81
Kunkel	822.50	22.85	35 of 36	18.74
Manthey	265.50	8.05	19 of 33	3.58

that four other individuals, who quit prior to the January 11, 1983 hearing, worked the following number of hours in 1982 as part-time officers: Mark Manthei, 587.25 hours; Timothy Fletcher, 151.5 hours; Candace Kildow, 113.75 hours; and Spencer Lukas, 2 hours; that part-time officers worked approximately 2,480 hours for the City in 1982, of which 1,351 hours (approximately 55%) were worked during

the months of May through August; that, during the eighteen week period of September through December 1982, the part-time officers worked the following numbers of hours for the City, excluding school district events: Kunkel worked in every week but one, for a total of 337.25 hours; Cummings worked in five weeks for a total of 49.75 hours; Manthey worked in seven weeks for a total of 64.5 hours; and, Sellers worked in three weeks for a total of 14.5 hours; that Manthey did not work any hours in December; that Sellers did not work any hours, excluding school district events, in the months of September, November and December; that at least two of the part-time officers have other regular employment in addition to their work with the City; that several part-time officers have left the City's employment to accept full-time law enforcement positions with other employers; and, that one part-time officer was hired by the City as a full-time officer.

6. That as to Sellers, Manthey, and Cummings, the combination of regularity and frequency of employment and total hours worked during periods of normal departmental operation (September through December 1982) is insufficient to warrant their being found to be regular part-time employees.

7. That as to Kunkel, the combination of regularity and frequency of employment and total hours worked during periods of normal departmental operation (September through December 1982) is sufficient to warrant his being found to be a regular part-time employee.

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

CONCLUSIONS OF LAW

1. That part-time officer Kunkel is a regular part-time employee, and therefore, appropriately includable in the existing collective bargaining unit described in Finding of Fact 3 and modified in the Order.

2. That part-time officers Sellers, Manthey, and Cummings are casual employees and therefore excluded from the existing bargaining unit described in Finding of Fact 3 and modified in the Order.

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

ORDER

1. That pursuant to the parties' stipulation set forth in Finding of Fact 4, it is deemed appropriate to modify the bargaining unit description to the following

All full-time and regular part-time employees with the power of arrest employed by the City of Milton excluding officer and clerical employees, supervisory, confidential and managerial employees, special police officers and all other employees.

2. That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the


Milton excluding office and clerical employes, supervisory, confidential and managerial employes, special police officers and all other employes for the purposes of collective bargaining with the City of Milton with respect to wages, hours and conditions of employment or whether a majority of said employes do not desire to be so represented and thereby to continue to be excluded from the unit.

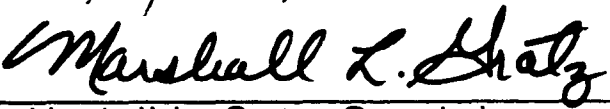
Given under our hands and seal at the City of Madison, Wisconsin this 1st June, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

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

The parties agree that the part-time officers perform the same job duties as do the full-time officers, in addition to having the same supervision and working conditions. However, the Union contends that the part-time officers are employed on a regular part-time basis, whereas the City asserts that said officers are casual employes.

A majority of the hours worked by the part-time officers in 1982 occurred during a four month period in which more work than normal was available to part-time officers due to the extended illness of one full-time officer and to the City's difficulty in replacing another full-time officer. Outside of that period, the part-time officers, with the exception of Kunkel worked on a less frequent basis, as shown by Manthey having not worked at all in December and by Sellers having not worked except for school district functions, in September, November or December.

In determining whether less than full-time employes share a sufficient community of interest with regular full-time employes to be included in the same bargaining unit, the Commission has considered a variety of factors including commonality of supervision, similarity of duties and responsibilities, similarity of wages, benefits and working conditions, frequency and regularity of employment, and whether the employe has the right to reject the work the employer makes available.

While "on-call" and other employes free to accept or reject the work offered them by their employer have frequently been held to be casual employes lacking a sufficient community of interest with regular full-time employes performing the same work under similar working conditions, 1/ there are circumstances in which such employes will be held to be regular part-time employes properly includable in the same unit as the full-time personnel. For example, where, as here, the employer week in and week out makes a regular schedule of work available to a group of less than full-time employes who are free to accept or reject it, those of the employes whose work acceptances over a relevant recent measuring period amount to a substantial aggregate number of hours with a reasonable degree of regularity, will be found to be properly included in the unit with the regular full-time personnel performing the same work under similar working conditions. This will be the case despite the absence of a uniform schedule of hours worked each day or week by the individuals involved and despite the fact that the employe was "on-call" or otherwise free to accept or reject the work opportunities involved. For, in such circumstances, the employe can fairly be said to have a reasonable expectation of future part-time employment consistent with the pattern experienced by that employe in the past.

The record herein reveals that employe Kunkel worked on a frequent and recurrent basis and has worked a significant number of hours during a relevant recent measuring period. Thus we conclude that he is appropriately identifiable as a regular part-time employe and eligible to vote. Manthei has resigned, so his status is moot. Inasmuch as Cummings, Sellers and Manthey also have the right to

accept or reject work and have not worked a significant number of hours on a reasonably regular basis during the relevant measuring period when departmental operations were normal and unaffected by an unusually lengthy absence, those employes have been found to be casual employes not properly included in the unit in question.

Dated at Madison, Wisconsin this 1st day of June, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

1/ Compare Sawyer County, (19219) 12/81, and Door County, (20029) 10/82 (excluded as casuals) with Mt. Horeb, (19188) 12/81, and Town of Grand Chute, (19870) 9/82 (included as regular part-time).