

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
CIVILIAN EMPLOYEE RELATIONS DIVISION**

Involving Certain Employees of
CITY OF MIDDLETON

Case 37
No. 66609
ME-4112

Decision No. 15358-B

Appearances:

Thomas W. Bahr, Executive Director, Wisconsin Professional Police Association, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Wisconsin Professional Police Association\Civilian Employee Relations Division.

David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of Dane County, Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO

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

On January 9, 2007, the Wisconsin Professional Police Association/Civilian Employee Relations Division (WPPA) filed a petition with the Wisconsin Employment Relations Commission seeking an election among the dispatchers in the City of Middleton Police Department to determine whether said employees wished to be represented by WPPA for the purpose of collective bargaining or wished to continue to be represented by Dane County, Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO (AFSCME) for said purpose.

On January 17, 2007, the Commission advised the parties that the WPPA election petition had not been accompanied by the requisite 30% showing of interest. WPPA then filed an additional showing of interest and on January 23, 2007, the Commission advised the parties that the requisite 30% showing of interest had now been met.

No. 15358-B

AFSCME thereafter took the position that a unit of dispatchers is not appropriate within the meaning of Sec. 111.70 (4)(d) 2.a., Stats., and hearing on that issue was held in Madison, Wisconsin on April 13, 2007 by Commission Examiner Peter G. Davis. The City did not appear at the hearing and advised the Commission that it takes no position as to the election petition. AFSCME and WPPA filed written post-hearing argument, the last of which was received May 14, 2007.

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 Middleton, herein the City, is a municipal employer.
2. The Wisconsin Professional Police Association/Civilian Employee Relations Division, herein WPPA, is a labor organization.
3. Dane County, Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO, herein AFSCME, is a labor organization that was certified by the Commission in 1977 as the collective bargaining representative of a bargaining unit of City employees described in Article 1.01 of the parties' 2002-2003 agreement as:

. . . all regular full-time and regular part-time employees employed by the City of Middleton in its City Hall, excluding supervisory, confidential, managerial, professional and craft employees, law enforcement personnel, all employees presently represented in the Public Works Department and all other employees of the City . . .

The 2002-2003 agreement identified the following job classifications:

Eng. Tech. III
Eng. Tech II
Eng. Tech I
Court Officer
Dispatcher
Building/Grounds Mtce. Worker
Secretary
Court Clerk
Clerk -Typist II
Clerk -Typist I

As AFSCME and the City prepared to begin collective bargaining for a successor to the 2002-2003 contract, the Dispatchers included in the City Hall unit approached AFSCME and asked if separate contract could be bargained for them. AFSCME and the City agreed to do so and

thereafter reached agreement on two 2004-2006 contracts-one covering what the cover page of the contract called the “(CITY HALL-DISPATCHER SUBUNIT)’ governing the wages, hours and conditions of employment of the five Dispatchers and the other covering what the cover page of the contract called the “(CITY HALL SUBUNIT)” governing the wages, hours and conditions of employment of eleven City Hall employees. Both of the contracts contain provisions which specify that a single seniority list including employees from both “SUBUNITS” shall be used for the purposes of layoff and recall. Both contracts also contain the same Article 1.01 description of the bargaining unit set forth above but the Article 1.01 of the CITY HALL-DISPATCH SUBUNIT includes an additional single sentence paragraph which states:

This agreement covers the wages, hours, and conditions of employment of the Police Dispatch employees only.

At the time the instant election petition was filed, bargaining was ongoing between AFSCME and the City as to successors to the CITY HALL-DISPATCH SUBUNIT and CITY HALL SUBUNIT contracts. Since the instant election petition was filed, agreement has been reached a 2007-2009 contract covering the CITY HALL SUBUNIT.

4. The Dispatchers have some duties and skills that overlap those of other City Hall employees and some duties and skills that are distinct.

5. The Dispatchers’ wages are higher than some City Hall employees and lower than others. The Dispatchers’ fringe benefits are essentially the same as other City Hall employees.

6. The Dispatchers’ hours are distinct from other City Hall employees.

7. The Dispatchers have supervision that is separate from other City Hall employees.

8. The Dispatchers share a common workplace with other City Hall employees.

9. The City employs approximately 285 employees. In addition to the City Hall and Dispatch employees, 48 City employees are currently included in the following collective bargaining units: (1) law enforcement unit-23 employees; (2) public works unit-19 employees; (3) fire fighter bargaining unit -6 employees.

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

CONCLUSIONS OF LAW

1. The Dispatchers are currently part of the overall City Hall bargaining unit described in Finding of Fact 3.

2. A collective bargaining unit of all regular full-time and all regular part-time dispatchers employed by the City of Middleton is not an appropriate collective bargaining unit within the meaning of Sec. 111.70 (4)(d) 2.a., Stats.

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

ORDER

The petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of June, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

CITY OF MIDDLETON

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

WPPA, contrary to AFSCME, asserts that an election in a Dispatcher unit should be conducted because: (1) a separate Dispatcher unit already exists; and (2) if a separate Dispatcher unit does not already exist, such a unit is appropriate and should be created.

As to the issue of whether a separate Dispatcher unit already exists, Finding of Fact 3 reflects that AFSCME and the City agreed to and did bargain a separate contract for the Dispatchers. WPPA points to the separate contract bargained by a Dispatcher only bargaining team as evidence that a separate unit has been created. While the evidence cited by WPPA is certainly relevant, it must be considered in the context of AFSCME testimony that AFSCME and the City did not agree to establish a separate Dispatcher unit and the absence of any City testimony on the unit creation question. Considering all of the evidence, and particularly in light of the Article 1.01 Recognition clause in both SUBUNIT contracts which describes the City Hall unit as being intact, we conclude that a separate Dispatcher unit does not currently exist.

Turning to the question of whether it is appropriate to create a separate Dispatcher unit, Sec. 111.70 (4)(d) 2.a. , Stats., provides:

2.a. The commission shall determine the **appropriate** collective bargaining unit for the purpose 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 municipal employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a collective bargaining unit (emphasis added).

When making the determination of whether a unit is “appropriate”, 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 have separate or common supervision with 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); BENTON SCHOOL DISTRICT, DEC. NO. 24147 (WERC, 12/86); BOYCEVILLE COMMUNITY SCHOOL DISTRICT, DEC. NO. 20598 (WERC, 4/83).

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 of long-standing, and has received the approval of the Wisconsin Supreme Court. ARROWHEAD UNITED TEACHERS v. WERC, SUPRA.

The fragmentation criterion 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 workforce.”

The bargaining history criterion 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).

Based upon long-standing Commission precedent, it is well established that within the unique factual context of each case, not all criteria deserve the same weight (SHAWANO-GRESHAM SCHOOL DISTRICT, DEC. NO. 21265 (WERC, 12/83); GREEN COUNTY, DEC. NO. 21453 (WERC, 2/84); MARINETTE COUNTY, DEC. NO. 26675 (WERC, 11/90)) and thus a single criterion or a combination of criteria listed above may be determinative (Common purpose, MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NOS. 20836-A and 21200 (WERC, 11/83); similar interests, MARINETTE SCHOOL DISTRICT, SUPRA; fragmentation, COLUMBUS SCHOOL DISTRICT, DEC. NO. 17259 (WERC, 9/79); bargaining history, LODI JOINT SCHOOL DISTRICT, DEC. NO. 16667 (WERC, 11/78)). Consequently, the Commission gives effect to the aforesaid statutory provision by employing a case-by-case analysis (APPLETON AREA SCHOOL DISTRICT, DEC. NO. 18203 (WERC, 11/80)) “to avoid the creation of more

bargaining units than is necessary to properly reflect the employee's community of interest." AREA BOARD OF VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT NO. 1, DEC. NO. 11901 (WERC, 5/73).

As to Factor 1, the Dispatchers have the "shared purpose" with other City Hall employees of providing quality services to citizens. However, viewed more narrowly, WPPA is also correct when it argues that the Dispatchers' law enforcement-related duties create a "shared purpose" with employees of the City Police Department that is distinct from other City Hall unit employees.

Looking at Factor 2, the Dispatchers have some general clerical/administrative duties and skills that are shared by the clerical/administrative employees in the City Hall unit. However, the record also establishes that the stressful and specialized nature of the Dispatchers duties' distinguish them from others in the City Hall unit.

As to Factor 3, the Dispatchers' wages and fringe benefits are not distinctive but their 24/7 work schedule/hours are not shared by any other City Hall employees. As noted in Finding of Fact 3, the Dispatchers and other City Hall employees are included in a common seniority list that is used for the purposes of layoff and recall.

As to Factor 4, the Dispatchers have supervision that differs from the City Hall employees.

As to Factor 5, the Dispatchers share a common workplace with other City Hall employees. This Factor is applied in a broad manner with employees working in the same building complex being deemed to share a "common workplace". Thus, contrary to the argument of the WPPA, the fact that the Dispatchers work in the "communications center" does not create a separate "workplace" where, as here, the evidence reflects that other City Hall unit employees work in the same building as the Dispatchers.

Turning to Factor 6, splitting a 16 employee unit into two units of 11 and 5 employees, respectively, runs contrary to the statutory anti-fragmentation directive in Sec. 111.70 (4)(d) 2.a., Stats., particularly in the context of the large overall number of City employees. Contrary to the WPPA, the fact that the City has not objected to creation of a separate Dispatcher unit is not determinative. The interest in avoiding fragmentation is a statutory matter that we are obligated to consider without regard to the positions the parties take in any particular case. MADISON SCHOOLS, DEC. NO. 20836-A (WERC, 11/83).

As to Factor 7, bargaining history presents a mixed picture. Although the last two rounds of bargaining have found the Dispatchers bargaining separately from the other City Hall employees, it is also apparent that the Dispatchers' wages, hours and conditions of employment have bargained in the context of the overall City Hall contract for a much longer period of time.

Considering all of the foregoing, we conclude that a Dispatcher-only unit would not be appropriate within the meaning of Sec. 111.70 (4)(d) 2.a. Stats. The anti-fragmentation factor strongly weighs against such a unit and the “bargaining history” factor is more demonstrative of AFSCME’s willingness to accommodate the Dispatchers distinctive issues than it is supportive of a separate unit. In that context, the “community of interest” factor is not sufficiently compelling to warrant creation of the separate unit sought by WPPA.¹ Therefore, we have dismissed the petition for election.²

Dated at Madison, Wisconsin, this 26th day of June, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

¹ See CITY OF MENASHA, DEC. NO. 24446 (WERC, 4/87) for a similar analysis.

² At hearing, the WPPA indicated that if the Dispatcher-only unit was rejected, it might consider seeking an election in the overall City Hall unit. We have reviewed the showing of interest filed by WPPA and it does not meet the requisite 30% showing when measured against the number of employees in the overall unit. Thus, dismissal of the election petition at this time is appropriate.

