

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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WISCONSIN PROFESSIONAL POLICE	:	Case 10
ASSOCIATION/LAW ENFORCEMENT	:	No. 48993 ME-631
EMPLOYEE RELATIONS DIVISION	:	Decision No. 16511-C
	:	
Involving Certain Employes of	:	
	:	
CITY OF REEDSBURG	:	
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Appearances:

<u>Mr. Len Jaglarski</u> , Business Agent, Wisconsin Professional Police	Association/
<u>Ms. Ann M. McNeary</u> , Representative, Communications Workers of America,	AFL-CI
LaRowe and Gerlach, S.C., Attorneys at Law, by <u>Mr. James P. Gerlach</u> ,	110 Ma

FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT

On March 17, 1993, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division filed a petition with the Wisconsin Employment Relations Commission to clarify a bargaining unit of municipal employes of the City of Reedsburg by including the newly-created position of Database Clerk in the unit represented by the Association. A hearing was scheduled for April 26, 1993 in Reedsburg, Wisconsin, before Examiner Lionel L. Crowley, a member of the Commission's staff. At that time, the Communications Workers of America, who represent a bargaining unit of employes of the City of Reedsburg, was permitted to intervene. After some discussion, it was agreed that the hearing would be indefinitely postponed until the duties of the position were better established. Hearing was held on April 25, 1994 in Reedsburg, Wisconsin. The hearing was transcribed and the parties made oral arguments with respect to their positions. The City indicated it took no position as to the unit in which the Database Clerk should be placed. The Commission, having reviewed the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter referred to as the Association, is a labor organization with its offices located at 7 North Pinckney Street, #220, Madison, Wisconsin 53703.

2. Communications Workers of America, AFL-CIO, hereinafter referred to as the CWA, is a labor organization with its offices located at: c/o Ann M. McNeary, 1221 Sunfield, #3, Sun Prairie, Wisconsin 53590.

3. The City of Reedsburg, hereinafter referred to as the City, is a municipal employer with its principal offices located at 134 South Locust, Reedsburg, Wisconsin 53959.

4. The Association is the certified exclusive collective bargaining representative for employes of the City in the following unit:

All regular full-time and regular part-time non-professional employes (dispatchers) of the Reedsburg Police Department, excluding patrolmen, professional, confidential, supervisory and managerial employes. 4/

5. The CWA is the certified exclusive collective bargaining representative for employes of the City in the following unit:

All regular clerical employes employed by the City of Reedsburg in the City Hall, excluding supervisors, confidential, managerial employes and all other employes. 5/

6. In late 1992, the City created the position of Database Clerk in the Police Department with the job description as follows:

Purpose: The purpose of this position is to achieve and maintain control of the department's record keeping function in order to assure the accuracy, completeness, and security of all departmental records and record keeping systems.

Duties and Responsibilities:

The Database Clerk is under the direct and sole supervision of the Chief of Police, and shall work those hours directed by the Chief of Police. The duties of this position include, but are not

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4/ Dec. No. 16511-B (WERC, 11/92).

5/ Dec. No. 13138 (WERC, 11/74).

necessarily limited to the following:

1. **Computer database management.**

Performs those activities necessary to achieve and/or maintain control of the accuracy, completeness, efficiency, and security of the computerized files of the department through data entry, editing, and updating. Designs, customizes, and maintains command files and applications. Effectively recommends changes necessary in software, hardware, and procedures related to the department's computer system.

2. **Original document database management.**

Performs those activities necessary to achieve and/or maintain control of the accuracy, completeness, efficiency, and security of the department's original documents and "hard" files. Organizes, files, and updates all records in the custody of the department.

3. **ISF checks processing.**

Performs those activities necessary to achieve and/or maintain control of the accuracy, completeness, efficiency, and security of the department's insufficient funds checks program, up to the point where enforcement action is to be taken. Testifies in court as necessary.

4. **UCR & Validations.**

Performs those activities necessary to achieve and/or maintain control of the UCR and validations function of the department. Complies and submits to proper authority all data related to said function.

5. **Open Records Requests**

Receives, processes, and invoices all requests made under the Open Records Law. Escorts and provides clerical assistance to individuals demanding on site inspection and/or copying of department records under the Open Records Law.

## QUALIFICATIONS

The successful candidate for this position shall possess the following minimum qualifications:

1. At least five years continuous full time experience in a substantive office occupations environment.
2. Ability to type 60 words per minute accurately.
3. At least two years experience with R:BASE user menus for data entry, data editing, and data backups, along with a basic understanding of R:BASE systems from a user's point of view.
4. Willingness and ability to learn and implement computer application design, testing, and implementation.
5. Demonstrated ability to plan, organize, initiate, and follow through on job tasks and assignments.
6. Demonstrated ability to work with a minimum of supervision.
7. Demonstrated ability to learn complex concepts quickly, and implement same consistently.

7. Christine Hutchins, who was employed as a dispatcher in the Police Department, signed the posting for the position of Database Clerk and was given the job. Additional duties were later added to the job which include:

### T.I.M.E. System Coordinator

This entails being the training officer for the department dispatchers for the Transition Information for Management of Enforcement, a national TTY network which includes the NCIC (National Crime Information Center), CIB (Crime Information Bureau), MVD (Motor Vehicle Division), and NLETS (National Law Enforcement Telecommunications System). This requires annual recertification and extensive use of the system computer. Only persons holding a valid certificate may touch this computer terminal.

### Emergency Dispatcher

The database clerk must maintain his/her proficiency as a dispatcher in order to fill in or assist during

emergencies. This involves continued knowledge of how to page and dispatch police, fire, and ambulance personnel.

Hutchins' main duty is to perform computer work putting all police cases in the different data bases and then to make reports that go to various State and social service agencies. Hutchins also performs relief dispatching duties on a daily basis.

Hutchins reports directly to the Chief of Police who does not supervise any employes in the CWA unit. She performs all her work in the Police Department building, which is a separate building from City Hall in which the CWA represented clerical employes work. Her basic hours of work are Monday through Friday from 8:00 a.m. to 4:00 p.m., a work schedule similar to that of the clerical employes represented by the CWA. Hutchins was paid the same rate of pay as a dispatcher until recently, when she was given a raise to \$10.91/hour, which is the same rate as the Deputy Clerk Treasurer, a position represented by the CWA.

On the basis of the foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The position of Database Clerk is appropriately included in the Association bargaining unit set forth in Finding of Fact 4.

On the basis of the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 3/

The position of Database Clerk be, and the same hereby is, included in the collective bargaining unit described in Finding of Fact 4, represented by the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

Given under our hands and seal at the City of Madison, Wisconsin this 13th day of October, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner

(Footnote 3/ appears on the next page.)

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- 3/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(Footnote 3/ continues on the next page.)

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(Footnote 3/ continues from the previous page.)

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission;

and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.  
CITY OF REEDSBURG

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

The Association filed a petition to clarify bargaining unit to include the newly-created Database Clerk position in the bargaining unit represented by it. The Communications Workers of America intervened and claimed that the position belonged in the City Hall clerical unit represented by it. The City took no position with respect to the unit in which the position should be included.

THE PARTIES' POSITIONS

The Association contends that the Database Clerk position falls within the bargaining unit represented by it, which unit description states, "All regular full-time and regular part-time non-professional employes (dispatchers) of the Police Department. . ." It asserts that Hutchins, the incumbent Database Clerk, wishes to be represented by the Association. The Association points out that the duties of the Database Clerk have expanded to include training new personnel on the operation of the teletype and that only dispatchers can use this equipment. It also refers to Exhibit 7 in which it is stated that the Database Clerk must maintain his or her proficiency as a dispatcher in order to fill in or assist during emergencies which require continued knowledge of how to page and dispatch police, fire and ambulance personnel. The Association asks that the Database Clerk be placed in the unit it represents.

The Communication Workers of America contend that the unit represented by the Association is for dispatchers, arguing the original election petition referenced dispatchers, the Association contract refers to a dispatcher unit and that there was no Database Clerk when the dispatcher unit was established. It points out that the pay of the position is the same as that of the City Hall clerks and the duties are similar as far as computer work is concerned. It submits that the duties of the job changed after the posting only because Hutchins was previously a dispatcher, that dispatching is not a requirement of the job and that the next person to fill the job may not be a dispatcher. The CWA insists that each of the City Hall clerks have their own skills and expertise but the skill level is very similar to the Database Clerk.

DISCUSSION

When deciding where to place the Database Clerk, it is appropriate to consider the language used to describe the scope of the existing bargaining units. 6/

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6/ Madison Metropolitan School District, Dec. No. 14514-I (WERC, 9/94); Walworth County, Dec. No. 18271-A (WERC, 12/90).

The Association unit consist of:

All regular full-time and regular part-time non-professional employes (dispatchers) of the Police Department. . . .

The Database Clerk is a regular full-time non-professional employe of the Police Department and to that extent the unit description language supports her inclusion into the Association unit. The parenthetical reference in the unit description to "dispatcher" is also somewhat supportive of inclusion in the Association unit because the Database Clerk does perform dispatch duties on a daily basis. Inasmuch as dispatchers were the only non-professional Police Department employes in existence when we certified the unit in 1992, we conclude the reference to "dispatchers" is most reasonably viewed as a shorthand description of the unit rather than an effort to exclude other non-professional employes of the Department.

The CWA unit consists of

All regular clerical employes employed by the City of Reedsburg in the City Hall. . .

The Database Clerk is primarily a "clerical" employe but is not physically located in the "City Hall". However, the "City Hall" reference may only reflect the fact that all clerical employes did work in the City Hall prior to creation of the Database Clerk position. Thus, although the unit descriptions are more supportive of inclusion in the Association unit, they are less than definitive as to the appropriate placement of the Database Clerk.

When resolving the unit placement issue, it is thus also appropriate to consider certain criteria we use when establishing the appropriate scope of bargaining units. 7/ Thus, we examine the Database Clerk's work duties,

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7/ In determining the appropriate unit, the Commission has consistently applied the following criteria:

1. Whether the employes in the unit sought share a "community of interest" distinct from that of other employes;
2. The duties and skills of employes in the unit sought as compared with the duties and skills of other employes;
3. The similarity of wages, hours and working conditions of employes in the unit sought as compared to wages, hours and working conditions of other employes;
4. Whether the employes in the unit sought have separate or common supervision with other employes;

purpose and skills, wages, hours and conditions of employment, supervision and work location as compared to employes in the competing units to determine the best match in terms of "community of interest".

The record establishes that the Clerk's role in the Police Department and her secondary dispatching duties give her a shared law enforcement purpose with the employes in the Association unit. Her duties and skills and her wages, hours and conditions of employment best match those of the employes in the CWA unit. Her supervision and work site support inclusion in the Association unit.

On balance, we conclude the Clerk shares a stronger "community of interest" with the employes in the Association unit.

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5. Whether the employes in the unit sought have a common workplace with the employes in said desired unit or whether they share a workplace with other employes;

6. Whether the unit sought will result in undue fragmentation of bargaining units;

7. Bargaining history.

Each case must be examined on its unique facts and not all the criteria are given the same weight and a single criterion or a combination of criteria may be found to be determinative. Additionally, the phrase "community of interest" as it appears in Factor 1 is a means of assessing whether the employes participate in a shared purpose through their employment. We have also used the phrase "community of interest" as a means of determining whether employes share similar interests, usually -- though not necessarily -- limited to those interests reflected in Factors 2 - 5.

Given all of the foregoing, we find that the position is appropriately included with the non-professional employes of the Police Department in the bargaining unit represented by the Association.

Dated at Madison, Wisconsin this 13th day of October, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner