

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
WISCONSIN PROFESSIONAL POLICE : Case VI  
ASSOCIATION : No. 24932 ME-1706  
Involving Certain Employees of : Decision No. 17374-D  
VILLAGE OF PEWAUKEE (POLICE DEPARTMENT) :  
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Appearances:

Mr. Mark T. Baganz, Attorney at Law, 411 East Mason Street,  
Milwaukee, Wisconsin, appearing on behalf of Wisconsin  
Police Negotiators.  
Goldberg, Previant, Uelmen, Gratz, Miller, Levy & Brueggeman,  
S.C., Attorneys at Law, by Ms. Marianne Goldstein Robbins,  
788 North Jefferson Street, Milwaukee, Wisconsin, appearing  
on behalf of Teamsters Locals 199, 662 and 695.  
Gimbel, Gimbel & Reilly, Attorneys at Law, 270 East Kilbourn  
Avenue, Milwaukee, Wisconsin, by Ms. Linda S. Vanden Heuvel,  
appearing on behalf of Wisconsin Professional Police  
Association.  
Melli, Shiels, Walker & Pease, Attorneys at Law, 119 Monona  
Avenue, Madison, Wisconsin, by Mr. Jack D. Walker and  
Mr. John Zawadsky, appearing on behalf of Grant County.

FINAL FINDINGS OF FACT,  
FINAL CONCLUSION OF LAW AND ORDER

The Wisconsin Employment Relations Commission having, on May 4, 1981, issued its Interim Findings of Fact, Interim Conclusion of Law and Interim Order in the above-entitled proceeding wherein it concluded that the Wisconsin Professional Police Association (WPPA) and any of its affiliates including the Law Enforcement Employee Relations (LEER) Division would not be considered to be a labor organization for purposes of collective bargaining on behalf of law enforcement personnel because of the participation of managerial and executive law enforcement personnel in its affairs, should the membership of said organization continue, after its annual convention in May 1981, to permit managerial and executive law enforcement personnel to become and/or remain members, other than honorary, in said organization; and the Commission having ordered WPPA to notify the Commission and the parties to this proceeding, by sending a notarized copy of that portion of the minutes of its May 1981 convention, of the action taken by its membership with reference to the type of membership, if any, hereafter available to managerial and executive law enforcement personnel employed by municipal employers in this state; and WPPA having on May 27, 1981 complied with the Commission's order; and the parties to this proceeding having been advised of the Commission's intent to review the results of the WPPA membership action with regard to the matter and issue its determination with respect to the issues remaining in this proceeding as well as certain other election cases pending before the Commission involving the WPPA; and Intervenor Grant County having, on June 5, 1981, filed a supplemental brief in the matter wherein it contends, inter alia, 1/ that WPPA should not be found to be a labor organization; and WPPA having, on June 10, 1981, filed a statement in response and opposition to the position taken by Intervenor Grant County; 2/ and the Commission having reviewed the matter and being fully advised in the premises, makes and issues the following

- 1/ Intervenor Grant County set forth its position as to the issue as it applies to its case (Case III) presently pending before the Commission.
- 2/ None of the other parties filed any additional argument or brief with regard to the issue remaining in this portion of the proceeding.

## FINAL FINDINGS OF FACT

1. That the Interim Findings of Fact previously issued by the Commission in this proceeding on May 4, 1981 are herein incorporated by reference as if fully set out herein.

2. That pursuant to the Commission's Interim Order, dated May 4, 1981, and in compliance therewith WPPA submitted a sworn statement of its Secretary, Daniel J. Bord, wherein he first states that:

"Each of the delegates was provided with a copy of the by-law amendment proposal relative to Article II - Members, a copy of which is annexed hereto. On May 17, 1981, this by-law change was unanimously approved and recommended for passage by the WPPA Board of Directors. The delegates were advised of the WPPA Board of Director's action. Discussion followed with Executive Director Jeff Anderson answering the questions posed by the delegates. A call for the vote on the Article II by-law change as provided to the delegates in written form was made by numerous delegates. A motion was made on the question by McCluskey of Racine and was seconded by Gray of West Allis. The motion was carried unanimously."

That the proposed bylaw amendment which was adopted by unanimous vote of the membership of WPPA read in its entirety, as follows:

In order to conform to the Wisconsin Employment Relations Commission's decisions in Teamsters Local 695, et al v. WPPA, No. 25314, Dec. #17448-C, and In the Matter of the Petition of WPPA Involving Certain Employees of Village of Pewaukee, No. 24932, ME-1706, it is recommended that the WPPA by-laws be amended as follows:

### ARTICLE II

#### Members

Section 1. Classes of Members. There shall be three (3) classes of members in the corporation: (1) Active, (2) Retired, and (3) Honorary.

Section 2. Active Members. Any certified, full-time law enforcement office, other than a confidential, managerial or executive employee, who has statutory powers of arrest and is employed by any unit of government in Wisconsin, shall be eligible to active membership status subject to the conditions set forth herein:

\* \* \*

(change all references to "participating members" in the current by-laws to "active members.")

Section 3. Retired Members. All active members shall be eligible for retired membership status upon their retirement. The conditions of such membership shall be governed by the Board of Directors.

Section 4. Honorary Members. Any full-time managerial, executive or confidential law enforcement officer with statutory powers of arrest employed by any unit of government in Wisconsin shall be eligible to honorary membership status subject to the conditions set forth herein.

- a) Eligibility. Honorary membership shall be available to those persons who were members of the WPPA on or before May 18, 1981. No person joining the WPPA as an active member

after May 18, 1981, shall be eligible for honorary membership status upon becoming a managerial, executive or confidential employee unless he has been a WPPA active member in good standing for at least three (3) consecutive years subsequent to May 18, 1981.

- b) Rights and Responsibilities. Honorary members shall be non-dues-paying, non-voting, non-office-holding members. Honorary members shall have no input into the formation or administration of the WPPA or any of its affiliates. The other rights and responsibilities of honorary members to the benefits of the Association shall be controlled at all times by the Board of Directors, provided, however, that honorary members shall not make any financial contribution to the WPPA or its affiliates.

3. That the WPPA bylaws, as amended at the May 1981 meeting of its membership, exclude confidential, managerial or executive personnel from active membership in said organization regardless of their full-time or part-time status, and regardless of whether they have been members of WPPA for three years prior to their becoming confidential, managerial or executive employees; and that said bylaws do not provide for any internal mechanism for determinations by WPPA as to who is, or has become, a confidential, managerial or executive employee.

Based on the above and foregoing Final Findings of Fact the Commission makes and enters the following

FINAL CONCLUSION OF LAW

That the Wisconsin Professional Police Association and its affiliated Law Enforcement Employee Relations Division is a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act for purposes of representing law enforcement employees employed by municipal employers in the state of Wisconsin for purposes of collective bargaining concerning the wages, hours and conditions of employment for said personnel.

Based on the above and foregoing Final Findings of Fact and Final Conclusion of Law the Commission makes and enters the following


ORDER


That the ballots cast by law enforcement personnel in the employ of the Village of Pewaukee in the election conducted on November 30, 1979, which were impounded by agreement of the parties, be opened and counted within thirty days of the date of this order at a time and place to be established by the Commission in order that the results of said election may be certified.

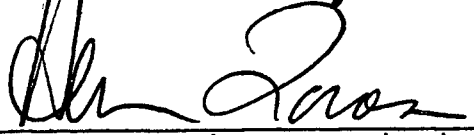
Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Gary D. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINAL FINDINGS  
OF FACT, FINAL CONCLUSION OF LAW AND ORDER

As noted in the Final Findings of Fact, on May 27, 1981 WPPA notified the Commission and all other parties to this proceeding of the action taken by its membership at the meeting on May 18, 1981, amending the Bylaws of said organization. Thereafter, on June 5, 1981 Intervenor Grant County filed a Supplemental Brief contending inter alia 3/ that the Commission should find that WPPA is not a labor organization.

In its brief Intervenor Grant County contends that WPPA is not a labor organization because:

- (a) It still admits supervisory law enforcement personnel to active membership and such membership presents the same potential for unlawful interference as does the active membership of executive and managerial personnel. In this regard, Intervenor Grant County acknowledges that the Commission has previously rejected this argument in a decision involving the WPPA but notes that the Commission has granted a motion for reconsideration in that proceeding and asks that the Commission, in effect, reverse its earlier determination in this regard.4/
- (b) The amendments to its bylaws only exclude "full-time" managerial, executive and confidential law enforcement personnel from active membership.
- (c) There is no mechanism provided in the bylaws to determine who is a managerial, executive or confidential employee.
- (d) The bylaws are capable of being interpreted to permit employees who become managerial, executive or confidential employees to retain active membership until they have completed the required three years of active membership before they become eligible for honorary membership.

The WPPA contends that there is no longer any question of its status as a labor organization and that the arguments advanced by Intervenor Grant County are without merit for the following reasons:

- (a) The Commission has previously held that WPPA's status as a labor organization is unaffected by the membership of supervisory law enforcement personnel, which membership is permitted by the provisions of the Municipal Employment Relations Act.

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3/ Because of the prior membership of managerial and executive employees in WPPA Intervenor Grant County also contends that the Commission should not certify WPPA as the bargaining representative for Grant County's law enforcement personnel pursuant to an election which was conducted among such personnel on February 22, 1980, the results of which were objected to by Grant County. We make no determination with regard to the merits of those objections herein. Here, the parties stipulated to the election with the understanding that the Commission would impound and not count the ballots until such time as the status of the WPPA was finally determined.

4/ We have declined to do so. See the memorandum accompanying our Order Modifying Certain Findings of Fact and Affirming Remaining Findings of Fact, Conclusion of Law and Order dated today. Decision Nos. 17371-F, 17447-D and 17448-D.

- (b) Section 2 of Article II of the bylaws as amended limits membership to full-time law enforcement officers "other than a confidential, managerial or executive employee" and thereby precludes membership by such personnel regardless of whether they happen to be employed full-time or part-time.
- (c) While it is true that there is no mechanism provided in the bylaws whereby WPPA will determine who is a managerial, executive or confidential employee, it is inappropriate for the WPPA to make such determinations since that function properly belongs to the WERC.
- (d) Section 4 of Article II of the bylaws as amended merely provides that in order to be eligible for honorary membership employees who join WPPA as active members must have remained as active members for a period of three years. It does not provide that such individuals have a right to remain as active members for a period of three years, if within said period they assume duties which would cause them to become confidential, managerial or executive employees. The express wording of Section 2 would preclude such an interpretation.

We find the arguments of Intervenor Grant County to be unpersuasive largely for the reasons advanced by WPPA. First of all its interpretations of the bylaws to the effect that they permit membership by part-time, confidential, managerial and executive employees is strained and flies in the face of the wording of Section 2 itself. The only logical way to interpret said provision is to find that such employees would be ineligible for active membership because they are part-time and because of their status as confidential, managerial and executive employees. Similarly, the interpretation that the Intervenor would place on Section 4 of Article II is not only strained but contradicts the express wording of Section 2. The only sensible interpretation of Section 4, in light of the wording of Section 2, is to the effect that employees who join WPPA after May 18, 1981 and thereafter within three years became confidential, managerial or executive employees, will not be eligible for honorary membership.

We agree with WPPA that it would be wholly inappropriate for the Commission to require that a labor organization establish an internal mechanism to determine whether an individual is a confidential, managerial, or executive employee. Such determinations are properly made by this agency when disputes arise. Nevertheless, the Intervenor's concern is not totally without merit. It may well be that law enforcement employees who join WPPA as active members will thereafter be promoted to positions or assigned new duties which will cause their status to change without any guarantee that such status change will be brought to WPPA's attention. If WPPA permits active membership by such personnel it stands the risk of losing its status as a labor organization.

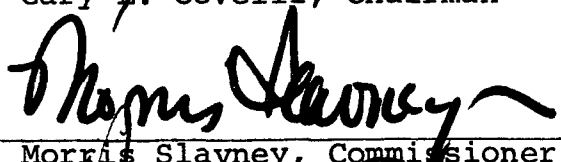
Based on the above and foregoing reasons we have today issued our Final Findings of Fact, Final Conclusion of Law and Order directing that the impounded ballots be opened and counted.

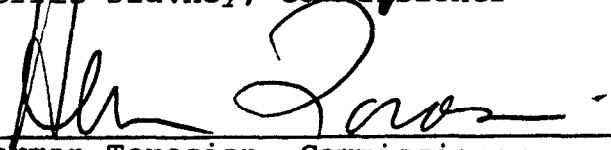
Dated at Madison, Wisconsin, this 18th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Gary I. Covelli, Chairman

  
Morris Slavney, Commissioner

  
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