

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Involving Certain Employees of  
**VILLAGE OF WEST MILWAUKEE**

Case 48  
No. 67006  
ME(u/c)-1219

**Decision No. 19013-C**

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**Appearances:**

**Gordon E. McQuillen**, Attorney at Law, 822 South Gammon Road #2, Madison, Wisconsin 53719-1377, appearing on behalf of Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

**Susan M. Love**, Davis & Kuelthau, S.C., 111 East Kilbourn, Suite 1400, Milwaukee, Wisconsin 53202-6613, appearing on behalf of the Village of West Milwaukee.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

On May 29, 2007, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter WPPA/LEER or Association, filed a petition with the Wisconsin Employment Relations Commission seeking to have the Commission clarify an existing bargaining unit of law enforcement employees of the Village of West Milwaukee, hereinafter Village or Employer, by including part-time employees/positions. After a telephonic pre-hearing conference with Commissioner Susan J.M. Bauman serving as Hearing Examiner, the parties agreed to submit the dispute on Stipulation and written argument, the last of which was received on October 26, 2007. On November 9, 2007, the Employer advised that it would not be filing a reply brief, whereupon the record was closed.

No. 19013-C

The Employer, contrary to the Association, asserts that newly created part-time employees/positions should not be added to the existing bargaining unit because the parties have previously entered into an enforceable “deal” that the unit is limited to full-time employees/positions.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**FINDINGS OF FACT**<sup>1</sup>

1. The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (WPPA/LEER) has been and is a labor organization within the meaning of Sec. 111.70(1)(h), Stats.

2. The WPPA/LEER is the exclusive collective bargaining representative for all employees in a bargaining unit composed of police officers employed by the Village of West Milwaukee (the “Village”), certified by the Wisconsin Employment Relations Commission (WERC) on October 30, 1981. VILLAGE OF WEST MILWAUKEE (POLICE DEPARTMENT), CASE XXIV, No. 24888, ME-2038.

3. The principal representative of the WPPA/LEER is:

Mr. Thomas W. Bahr, Executive Director  
Wisconsin Professional Police Association  
Law Enforcement Employee Relations Division  
340 Coyier Lane  
Madison, WI 53703  
608-273-3840 (Office)  
608-273-3904 (Facsimile)

4. The Village has been and is a municipal employer within the meaning of Sec. 111.70(1)(j).

5. The principal representative of the Village is:

Ms. Susan Love  
Davis & Kuelthau, S.C.  
Suite 1400  
111 East Kilbourn Avenue  
Milwaukee, WI 53202-6613  
414-225-1494 (Office)  
414-278-3694 (Facsimile)

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<sup>1</sup> Findings of Fact 1 – 18 are included in the Joint Stipulation of Facts filed on September 14, 2007.

6. On March 15, 2007 the Village authorized the hiring of part-time police officers for the first time since the certification of the WPPA/LEER as the collective bargaining representative for rank and file police officers employed by the Village.

7. On June 27, 2007, the Village hired two regular part-time police officers.

8. The Village has not employed part-time officers prior to June 27, 2007.

9. The part-time officers do not have a regular work schedule and will be used to supplement the full-time police officer staff.

10. The parties' 1976 Collective Bargaining Agreement, at Article II – Recognition, provided that:

It is agreed that the employees, as hereinafter defined, constitute a separate, appropriate bargaining unit, as acknowledged by the Village Board, as the result of a petition submitted to the Village on February 12, 1965, and signed by the members of the Association, and subsequently accepted by the Village on February 15, 1965, and the Village hereby recognizes the Association as the exclusive bargaining agent for all the employees, as hereinafter defined, in said bargaining unit, and this Agreement covers all such employees. The term employees shall include all regular full-time employees of the West Milwaukee Police Department employed in the classification of Sergeant of Police, Detectives, Juvenile Officer/Detective and Patrolmen, but shall not include supervisory employees, namely those employees with the title of Chief of Police and Lieutenant of Police, and such other categories as the Village Board and the Fire and Police commission may create. It shall remain the unchallenged power of the Village Board and the Fire and police Commission to create additional supervisory personnel as it deems necessary.

11. The Recognition Clause, identified in paragraph 10 <sup>2</sup>, above, remained in effect until amended by order of the WERC in 1981, at which time the Recognition Clause was amended to:

In accordance with the certification of the Wisconsin Employment Relations Commission on October 30, 1981, in Decision No. 19013-B, the Village hereby recognizes the Association as the exclusive bargaining agent for all the employees in the bargaining unit consisting of all regular full-time law enforcement employees with the power of arrest employed in the Police Department of the Village of West Milwaukee in the classifications of Sergeant of Police, Detective of Police, and Patrol Officer, but excluding the Chief of Police, Assistant Chief of Police, and all other supervisory, managerial,

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<sup>2</sup> The Stipulation incorrectly referenced Paragraph 7.

executive, confidential employees, and all other employees. It shall remain the unchallenged power of the Village Board and the Police Commission to create additional supervisory personnel as it deems necessary.

12. The Recognition Clause, identified in paragraph 11 <sup>3</sup>, above, remained unchanged up to and including the date the Association filed a Unit Clarification Petition in the instant matter, dated May 25, 2007.

13. The “Association” referred to in the amended Recognition Clause is the WPPA/LEER.

14. On April 16, 2007 <sup>4</sup>, the WPPA/LEER requested that the Village voluntarily accrete the newly created position of Part-time police officer into the bargaining unit.

15. On April 30, 2007, the Village denied the WPPA/LEER’s request for inclusion of the regular-part time officers into the existing bargaining unit represented by WPPA/LEER.

16. On May 25, 2007 <sup>5</sup> the WPPA/LEER filed a Petition to Clarify Bargaining Unit with the WERC seeking to include the newly created position of part-time police officers into the parties existing collective bargaining agreement.

17. The parties’ 1976 Collective Bargaining Agreement -- Article I – Management Rights – provided:

The Association recognizes the prerogatives of the Village to operate and manage its affairs in all respects in accordance with its responsibilities and in the manner provided by law, and the powers of authority which the Village has not specifically abridged, delegated or modified by other provisions of this Agreement are retained solely by the Village. Such powers and authority, in general, include, but are not limited to, the following:

- A) To determine the method and means by which the operations of the Village are to be conducted and to take whatever actions may be necessary in situations of emergency.
- B) To manage and direct the employees of the Village, to determine the size and composition of the work force and the manner in which employees shall do their work, and to determined the competence and qualifications of the employees.

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<sup>3</sup> The Stipulation incorrectly references paragraph 8.

<sup>4</sup> The Stipulation incorrectly states this as April 16, 2006.

<sup>5</sup> The Stipulation incorrectly states this as May 25, 2005.

- C) To utilize temporary, provisional, part-time, or seasonal employees when deemed necessary.
- D) To hire and promote employees and to make promotions to supervisory positions.
- E) To suspend, demote, or discharge employees in the manner set forth in the provisions of Sections 62.13(5), Wisconsin Statutes.
- F) To relieve employees from their duties because of lack of work or for other legitimate reasons in the manner set forth in the provisions of Section 62.13(5m), Wisconsin Statutes.
- G) To schedule overtime work when required.

18. The Management Rights provision referred to in paragraph 17 <sup>6</sup>, above, has been included in all of the parties' collective bargaining agreements since 1976 with respect to the reserved right of the Village <sup>7</sup> to "utilize . . . part-time . . . employees when deemed necessary. . . ," since 1976.

19. The 1976 collective bargaining agreement between the parties includes the following additional provisions <sup>8</sup>:

Article V- Longevity

5.01 – Employees, except part-time and temporary employees, shall be paid a monthly longevity allowance in addition to their basic salaries . . .

Article XXI – Insurance

21.01 – Hospital and Surgical Insurance:

- (a) Available to all full-time employees of the Village Police Department. . .

21.02 – Group Life Insurance:

- a) Available to all full-time employees of the Police Department having thirty days. . .

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<sup>6</sup> The Stipulation incorrectly refers to this as paragraph 14.

<sup>7</sup> The Stipulation incorrectly refers to the City.

<sup>8</sup> Findings of Fact 19 -21 are based on information obtained through review of the three referenced collective bargaining agreements which are attached to the Stipulation submitted by the parties.

20. The 1982 collective bargaining agreement between the parties includes the following additional provisions:

Article V – Longevity

5.01 – Employees, except part-time and temporary employees, shall be paid a monthly longevity allowance in addition to their basis salaries. . .

Article XXI – Insurance

21.01 Hospital and Surgical Insurance

- a) Available to all full-time employees of the Village Police Department . . .

21.01 – Group Life Insurance

- a) Available to all full-time employees of the Police Department . . .

21. The collective bargaining agreement between the parties for the period January 1, 2006 to December 31, 2007, includes the following additional provisions:

Article 5 – Longevity

5.01 – Employees, except part-time and temporary employees, shall be paid a monthly longevity allowance in addition to their basic salaries . . .

Article 21 – Insurance

21.01- Hospital and Surgical Insurance

- A) Available to all full-time employees of the Village Police Department . . .

21.02 – Group Life Insurance

- A) Available to all full-time employees of the Police Department having thirty (30) days of continuous service and who are under Retirement Fund.

21.03 - Dental Insurance The Village will provide at no expense to a full-time employee, a dental insurance plan . . .

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

**CONCLUSIONS OF LAW**

1. There is no enforceable agreement between the Village and the Association to exclude regular part-time police officers from the bargaining unit described in Finding of Fact 2, above.

2. Inclusion of the regular part-time police officers in the same collective bargaining unit as the regular full-time police officers is appropriate 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 CLARIFYING BARGAINING UNIT**

The regular part-time police officers shall be included in the bargaining unit represented by the Association.

Given under our hands and seal at the City of Madison, Wisconsin, this 14th day of February, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**VILLAGE OF WEST MILWAUKEE**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

The issue before us is whether part-time police officers should be added to an existing bargaining unit of full-time police officers employed by the Village of West Milwaukee and represented by the Association. The Employer contends that the Commission's long standing a "deal is a deal" policy requires a conclusion that the new part-time officers should be excluded from the unit. The Association argues that the "deal is a deal" policy may have outlived its usefulness; that is by no means clear what the "deal" was in this instance; that the collective bargaining agreements between the parties have always contemplated that part-time officers would be included in the unit; and that established exceptions to the "deal is a deal" policy exist here.

In NORTHERN OZAUKEE SCHOOL DISTRICT, DEC. NO. 14211-C (WERC, 9/05), we reaffirmed the viability of the "deal is a deal" policy and, for the reasons stated therein,<sup>9</sup> we decline the Association's invitation to end the policy now. We also decline to determine whether or not a "deal" exists to limit the unit to "full-time" employees, because, in this case, excluding regular part-time employees would create a potential law enforcement bargaining unit of the type that we have previously held is repugnant to the Municipal Employment Relations Act.

In NORTHERN OZAUKEE, the "deal is a deal" policy was summarized as providing that the Commission will not modify the composition of a voluntarily-agreed upon bargaining unit unless certain exceptions exist:

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<sup>9</sup> . . . the Commission for over thirty years has refused to change the scope of a voluntarily agreed-upon bargaining unit, even if the disputed positions otherwise clearly should be included, except under certain conditions. This so-called "deal is a deal" policy, first coined in CITY OF CUDAHY, DEC. NO. 12997 (WERC, 9/74), and further developed in CITY OF CUDAHY, DEC. NOS. 19451-A AND 19452-A (WERC, 12/82), has both statutory and pragmatic roots: on the one hand, the laws the Commission administer are designed to foster voluntary dispute resolution; on the other hand, it is efficient for the Commission as well as the parties to encourage a practical give-and-take over the contours of a bargaining unit, as this historically has permitted elections to occur in perhaps 90% of the cases without the delay and expense that would be occasioned by a preliminary unit determination hearing and decision. While it is ultimately the Commission's duty to foster appropriate units, and thus the scope of a bargaining unit remains a non-mandatory subject of bargaining, MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 20399-A (WERC, 9/83), the pragmatic policies favoring voluntary unit composition are an entrenched, well-established, and time-tested element of the Commission's regulatory procedures. With hindsight, a party's agreement on any particular inclusion or exclusion may appear unwise, but presumably the agreement reflected the pragmatic conditions prevailing at the time, including the efficiencies of a quicker election. As in this case, the Commission may strongly disapprove of the negotiated unit description or the unforeseen results of the agreement. Nonetheless, on balance, the Commission continues to find value in the "deal is a deal" policy and will apply it in the instant case.



1. The position(s) in dispute did not exist at the time of the agreement;
2. The position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential, etc;
3. The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; or
4. The existing unit is repugnant to the Act.

In NORTHERN OZAUKEE SCHOOL DISTRICT, the Commission declined to include part-time employees who worked less than 19 hours in an existing bargaining unit that was described as “[a]ll regular full time and regular part time (working nineteen (19) or more hours per week) office clerical employees, clerical teacher aides, library aides, custodians and cooks employed by the Northern Ozaukee School District in Fredonia, WI, but excluding all supervisory, professional, confidential (Superintendent’s secretary and one bookkeeper) and managerial employees and seasonal and temporary employees.” The Commission noted that at the time of recognition, the District employed regularly scheduled employees (Noon Servers) who worked fewer than 19 hours a week. The parties agreed that in order to be a member of the bargaining unit, one had to work at least 19 hours weekly. Many years later, the District decided to employ additional part-time employees for less than 19 hours, and the Association sought to accrete these individuals into the unit. We declined to do so, specifically recognizing and honoring the parties’ agreement.

The instant case is distinguishable from NORTHERN OZAUKEE because, at the time of recognition and subsequent certification, there were no part-time police officers. However, citing SAUK COUNTY, DEC. NO. 6762-A (WERC, 11/98), the Village argues the Commission has not applied the “did not exist” Exception (1) in a literal manner and has instead viewed Exception (1) as more generically asking the question of whether the agreed upon unit description establishes that the parties contemplated the existence of a type of employee/position and then agreed to exclude them. The Village points to the specific contractual inclusion of “full-time” employees, the specific contractual exclusion of “all other employees” and the contractual acknowledgement of the Village’s right to utilize “part-time” employees as evidence that the parties knowingly excluded part-time employees from the unit.

We need not determine whether the Village’s arguments about the existence of a “deal” are persuasive because we have previously held that only one unit of regular sworn law enforcement employees is appropriate. CITY OF MARSHFIELD, DEC. NO. 25700-A (WERC, 10/92). Were we to determine to exclude the regular part-time employees, there would be the potential for two regular sworn employee law enforcement units. Because two such units would not be appropriate given the statutory anti-fragmentation language of Sec. 111.70(4)(d)2.a.,

Stats., <sup>10</sup> the existing full-time employee unit would be repugnant to the Act because it would not contain all regular sworn law enforcement employees of the Village. Thus, the fourth exception set forth above to the “deal is a deal” policy is present and precludes us from excluding regular part-time sworn officers, even if said exclusion were based on the parties' agreement.

Accordingly, we have granted the Association's petition to include the regular part-time officers in the existing bargaining unit.

Dated at Madison, Wisconsin, this 14th day of February, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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<sup>10</sup> Section 111.70(4)(d)2.a., Stats. states in pertinent part:

The Commission . . . shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force.