

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
ASSOCIATION OF LAW ENFORCEMENT :
ALLIED SERVICES PERSONNEL, : Case 216
LOCAL 218, IUPA, AFL-CIO : No. 47351 ME-576
Involving Certain Employees of : Decision No. 19749-D
CITY OF MILWAUKEE (POLICE DEPARTMENT) :
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Appearances:

Schneidman, Myers, Dowling & Blumenfeld, P.O. Box 442, Milwaukee, WI
53201-0442, by Mr. Jeffrey P. Sweetland, appearing on behalf of the
ALEASP.
Grant Langley, Esq., Milwaukee City Attorney, City Hall, Room 800,
200 East Wells Street, Milwaukee, WI 53202, by Mr. Thomas Goeldner,
Assistant City Attorney, appearing on behalf of the City of Milwaukee.
Adelman, Adelman & Murray, S.C., 1840 North Farwell Avenue, Suite 403,
Milwaukee, WI 53202, by Mr. Kenneth J. Murray and Ms. Laurie A.
Eggert, appearing on behalf of the Milwaukee Police Association.

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

The Association of Law Enforcement Allied Services Personnel (hereinafter referred to as either ALEASP or the Petitioner) having, on April 22, 1992, filed with the Wisconsin Employment Relations Commission (hereinafter referred to as either the WERC or the Commission) a petition requesting that the Commission clarify an existing bargaining unit represented by the Petitioner of employees in the employ of the City of Milwaukee Police Department (hereinafter referred to as the City), by adding to that unit employees in the new classification of Police Support Specialists; and the Milwaukee Police Association (hereinafter referred to as either MPA or the Intervenor) having moved to intervene in the proceeding; and the parties having engaged in a number of pre-hearing conferences with respect to the petition; and the Commission having designated Daniel Nielsen, an Examiner on its staff, to conduct a hearing on the petition; and a hearing having been scheduled for November 9th and 16th, 1992; and the hearings having been postponed due to the unavailability of the Intervenor; and a hearing having been conducted on the petition on January 7 and 21, 1993, whereupon the parties were given full opportunity to present such testimony, exhibits, stipulations and other evidence as was relevant to the dispute; and the parties having submitted post-hearing briefs, which were exchanged after several mutually agreed extensions on July 21, 1993; and the Commission being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. The City of Milwaukee, hereinafter referred to as either the City or the Employer, is a municipal employer and has its offices at City Hall, 200 East Wells Street, Milwaukee, WI 53202.

2. The Association of Law Enforcement Allied Services Personnel Local #218, IUPA, AFL-CIO, hereinafter referred to as either the Petitioner or ALEASP, is a labor organization and has its offices at 7709 West Beloit Road, Suite 206, West Allis, WI 53219.

3. The Milwaukee Police Association, Local #21, IUPA, AFL-CIO, hereinafter referred to as either the Intervenor or MPA, is a labor organization and has its offices at 1840 North Farwell Avenue, Suite 400, Milwaukee, WI 53202.

4. On January 25, 1983, the Wisconsin Employment Relations Commission certified ALEASP as the exclusive bargaining representative of employees in a collective bargaining unit described as:

All regular full-time and regular part-time employees employed in the Police Department of the City of Milwaukee, excluding law enforcement personnel with the power of arrest, Police Aides, Heating and Ventilating Mechanics, Maintenance Mechanics, Custodial Workers, professional, craft, confidential, managerial and supervisory employees. (Dec. No. 19749-B).

The collective bargaining agreement between the City and ALEASP for the years 1991-1992 contains a recognition clause as follows:

ARTICLE 2

RECOGNITION

1. Except as provided for in subsection 2 of this Article, below, the City recognizes the Association as the exclusive bargaining agent, for the purposes of establishing wages, hours, and conditions of employment, for all regular full-time and regular part-time employees employed in the Police Department in the following classifications:

Clerk III
Clerk IV
Clerk Stenographer I
Clerk Stenographer II
Clerk Stenographer III
Clerk Stenographer IV
Clerk Typist I
Clerk Typist II
Clerk Typist III
Computer Operator I
Computer Operator II
District Station Clerk
Lead Offset Press Operator
Key Entry Operator I
Key Entry Operator II
Parking Checker
Stores Clerk I
Stores Clerk II
Police Telecommunicator
Messenger
Offset Press Operator I

2. In accordance with the Wisconsin Employment Relations Commission (WERC), certification of the Association bargaining unit dated January 25, 1983, law enforcement personnel having the power of arrest, Police Aides, Heating and Ventilating Mechanics, Maintenance Mechanics, Custodial Workers, Professional, Craft, confidential, managerial and supervisory employees are excluded from the Association bargaining unit. The following positions are excluded from

the bargaining unit as confidential, managerial or supervisory employees: [the listing of exclusions includes clerical personnel in the Internal Affairs Division, various clerical positions, three Account Clerk positions, the Accountant III positions, and the Printing and Stores Supervisor].

. . .

5. In the event new positions not now covered by the recognition provisions of this Agreement are created by the City through action of the Common Council and said positions would be embraced within the bargaining unit, provided the parties agree that the new position(s) should be embraced within the bargaining unit, then the employees appointed to such positions shall be deemed part of the bargaining unit and they shall be represented by the Association and also be covered by this Agreement.

5. That the MPA is voluntarily recognized as the exclusive bargaining representative of certain law enforcement employees of the City's Police Department. The 1991-92 collective bargaining agreement between the City and the MPA contains a recognition clause as follows:

ARTICLE 2

RECOGNITION

1. Except as provided for in subsection 2 (sic), below, the Association is recognized as the exclusive bargaining agent for employees in the active service and in the following classifications:

- Detective
- Police Officer
- Policewoman
- Identification Technician
- Chief Document Examiner
- Document Examiner
- Police Alarm Operator
- Police Matron
- Custodian of Police Property and Stores
- Assistant Custodian of Police Property and Stores
- Narcotics Control Officer
- Police Electronic Technician
- Police Audio-Visual specialist
- Court Liaison Officer
- Latent Print Examiner

If an employee occupying one of the classifications listed above is placed on an authorized leave of absence without pay, the Association shall also be recognized as the exclusive bargaining agent for that individual during the period of such leave. While on such leave, the individual shall not be covered by this Agreement and shall not be entitled to any of its benefits except as specifically provided herein.

2. The Association recognizes its responsibility to cooperate with the City to assure maximum service at

minimum cost to the public consistent (sic) with its obligations to the employees it represents.

. . .

4. In the event new positions not now covered by the recognition provisions of this Agreement are created by the City through action of the Common Council and said positions would be embraced within the bargaining unit, provided the City and Association agree that the new position(s) (sic) should be embraced within the bargaining unit, then the employees appointed to such positions shall be deemed part of such bargaining unit and shall be represented by the bargaining unit and they shall also be covered by the Agreement between the Association and the City.

6. The City operates a Police Department providing crime suppression, investigation and related services to the people of Milwaukee. ALEASP represents the employees of the Department who do not have the legal authority to detain persons on the basis of information and belief, commonly referred to as "the power of arrest". MPA represents those employees who do have the power of arrest.

7. Beginning on or about March 6, 1993, the City began hiring retired police officers and sergeants to fill the newly created position of Police Services Specialist. The City created a job description for the positions, describing the basic function of the job as follows:

Police Services Specialists will relieve full-duty sworn officers engaged in indirect law enforcement activities, at locations throughout the Department, by performing the duties associated with such activities. These positions may be filled on a full-time or half-time basis, some of the positions may be established on an intermittent basis. The needs of the police service will determine the work schedule for each position.

The duties and responsibilities of the job were described as:

Note: Police Services Specialists will not be required to perform direct law enforcement activities characteristic of full-duty officers.

A. Under supervision, Police Services Specialists are engaged in a variety of Police Department assignments requiring specific knowledge of police policies, procedures, methods and law enforcement techniques. Examples of work assignments for Police Services Specialists include, but are not limited to, the following:

1. Applicant background checks.
2. Property inventory control duties.
3. Identification Division support duties.

There are other areas within the Department's organization where Police Services Specialists may potentially be assigned. These include such assignments as, the Open Records Division, working with senior citizens and performing support functions to crime prevention, and other

related community policing activities.

B. Specific job summaries, detailing duties and responsibilities (and their percentage apportionment), will be prepared by the Commanding Officer of each unit to which Police Services Specialists are assigned.

Under "Qualifications Required" the job description specifies:

1. Current status as a service-retired City of Milwaukee non-civilian Police Department member.

2. Specific qualifications in terms of training, experience and skills at a level of expertise sufficient to allow for an optimal match of the individual's qualifications to the duties and responsibilities he/she will perform in a Police Services Specialist assignment.

8. The pay, benefits and employment terms for the Police Services Specialists were unilaterally established by the City. They are similar to those of employees in the ALEASP bargaining unit. Included in the "Pay, Benefit and Employment Terms Summary" for the position was the proviso that:

UNION REPRESENTATION: The Wisconsin Employment Relations Commission, the State agency responsible for administration of the Municipal Employee (sic) Relations Act, shall determine the union representation status for Police Services Specialists.

9. As of November 6, 1992, there were 24 persons employed in the classification of Police Services Specialist, constituting 16.5 FTE positions. Six employees, representing 4.0 FTE, were assigned to the Background Investigation Unit; one employee (1.0 FTE) was assigned to the License Investigation Unit; one employee (0.5 FTE) was assigned to the Juvenile Division; five employees (3.0 FTE) were assigned to the Vehicle Services Section; six employees (4.0 FTE) were assigned to Lock-Up and Court Administration; and five employees (4.0 FTE) were assigned to the District Stations. The job assignments of these employees were described by the Department as follows:

DESCRIPTIONS OF POLICE SERVICES SPECIALIST ASSIGNMENTS

Provided below are descriptions of the duties of the Police Services Specialists' assignments. The descriptions are not meant to be all inclusive or limiting in any way. The Police Department reserves the right to change or modify the duties and responsibilities of these positions consistent with the needs of the service.

PLACEMENTS:

Background Investigation Unit

DUTIES: Interviewing personal references and current neighbors of applicants and investigative follow-up, including obtaining police and court documents relating to prior criminal incidents, obtaining other documents pertaining to applicants being held by other police or governmental agencies, and interviewing law enforcement officials concerning prior contacts with applicants.

Lock-Up and Court Administration

Movement Entry Operator

DUTIES: Responsible for maintaining accurate prisoner data in the computer's prisoner location file, reviewing all detention and returnee forms to update prisoner movement location, maintaining the current medical status of each prisoner, conducting audits of County Intake Disposition Sheets, responding to numerous requests for prisoner housing information via phone, citizen walkups and department members, monitoring prisoner identification by the Identification Division, and notifying the Head Jailer when a prisoner is eligible for release.

Register Operator

DUTIES: Responsible for all cash transactions, primarily consisting of bails, deposits and inventories, preparing the bail or deposit forms prior to validation, processing personal recognizance for the Department and other agencies, assisting citizens at the window, answering phone inquiries, monitoring the closed circuit T.V., validating parking receipts for officers returning from court, and inventorying money received from officers and detectives.

Property Control

DUTIES: Responsible for the retention and disbursement of all prisoner property taken into custody and listed on the Inmate Property Register; security of the Property Room; receiving, inspecting, filing, and recording inmate property; responding to numerous citizen and department members' requests for property retrieval; obtaining proper authorization to release property and verifying identification of retrieving individual; and delivering prisoner's property to the Sheriff's Department.

License Investigation Unit

DUTIES: Responsible for assisting with the processing of public passenger vehicle, liquor or miscellaneous license applications. Specifically, the Police Services Specialist assigned to this location may conduct periodic inspections of public passenger vehicles or licensed liquor outlets, background investigations of prospective public passenger vehicle drivers and franchise holders, and follow-up investigations of complaints received from Alderpersons, the City License Clerk and/or citizens. Additionally, the Police Services Specialist may be required to testify at Utility and License Committee hearings relative to recommendations for approval or denial of licenses.

District Stations

DUTIES: Police Services Specialists assigned to the District Stations would be could be responsible for assisting Crime Prevention Officers/Community Services Coordinators with administrative tasks related to their community services work (however, to maintain the philosophy of community-oriented policing, Police Services Specialist should not replace these officers in outside community relations activities and engagements), which may include organizing blockwatch groups and administration of the district CAT program; and assisting patrol officers with call backs, taking walk-in accident and incidents

reports (including supplementary reports), following up on missing person investigations, fleet management and other administrative duties that detract from the officers' patrol time.

Vehicle Services Section

DUTIES: Responsible for chauffeuring Police Officials, servicing and making minor repairs to vehicles (gas, oil, headlights, taillights, windshield wipers, etc.), having vehicles washed, answering the telephone, conditioning new vehicles for service, changing tires, installing and removing tire chains, unloading supplies, changing equipment from one vehicle to another, operating the computer, assisting with stalled vehicles, assisting citizens with license plate checks, citation releases, and vin checks, cleaning the garage area, typing and filing necessary paperwork, maintaining proper and accurate records, assigning vehicles and keys, jump starting vehicles and performing other related duties as assigned.

Juvenile Division

DUTIES: A Police Services Specialist assigned to this division on a half-time basis would assist in the support function of Municipal Court Liaison/Statistical Compilation. Specifically, the Police Services Specialist would be responsible for processing City juvenile citations, including recording or logging citations processed; preparing a transmittal of citations to forward to the City Attorney's Office; reviewing citations for errors and returning to the District for correction; assisting juveniles and their parents with inquiries regarding citations and performing other related duties as assigned.

10. Police Services Specialists assigned to the Background Identification Unit are all retired sergeants, formerly represented in the Milwaukee Police Supervisor's Organization (MPSO) bargaining unit. They are issued badges and identification cards which are different than those carried by officers or sergeants having the power of arrest. They identify themselves as police officers. The background investigations are performed by Police Services Specialists working in tandem with active duty sergeants. The duties performed by these retired sergeants are similar to those performed by members of the MPSO, although Police Services Specialists do not have the authority to make recommendations on the hiring of applicants.

11. Police Services Specialists assigned to the District stations answer the telephone, hand out radios and squad keys to officers, and perform other duties as assigned. These duties are identical to those performed by clerks represented in the ALEASP bargaining unit and police officers represented in the MPA unit who are on limited duty due to injuries. Police Service Specialists and clerks are not permitted to carry weapons. Officers on limited duty do carry weapons in the stations.

12. All employees of the Police Department execute an Oath of Office upon entering into Department service. The oath for employees having the power of arrest reads:

I . . . who have been appointed to the office of . . . but have not yet entered upon the duties thereof, swear (or

affirm) that I will support the Constitution of the United States and the Constitution of the State of Wisconsin; to enforce all of the laws of the United States; the State of Wisconsin; the Ordinances of the City of Milwaukee; obey all of the lawful orders of my superior officers; and faithfully discharge the duties of my office to the best of my ability, so help me God. (Omit last phrase for affirmations).

Civilian employees execute an oath which omits the pledge to enforce the laws and ordinances:

I . . . who have been appointed to the office of . . . but have not yet entered upon the duties thereof, swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Wisconsin; obey all of the lawful orders of my superior officers; and faithfully discharge the duties of my office to the best of my ability, so help me God. (Omit last phrase for affirmations).

Police Services Specialists execute the oath for civilian employees. The City has taken the position, in a letter dated July 23, 1992 to Mr. Marshall Gratz of the WERC staff, that Police Services Specialists are civilian employees of the Police Department and do not possess the power of arrest.

13. Police Services Specialists who may observe criminal activity in the course of their duties are instructed not to attempt the arrest of any perpetrator, but instead to contact the Department so that an officer can be dispatched, and to closely observe so that they may provide information to the officers. Police Services Specialists are not permitted to carry weapons while on duty. Police Services Specialists who use unmarked police cars in their duties are instructed not to use the siren or the emergency lights in the cars.

14. On April 22, 1992, ALEASP filed the instant unit clarification petition seeking inclusion of the Police Services Specialists in the bargaining unit set forth in Finding of Fact 4, above. The MPA intervened in the case, seeking inclusion of the Police Services Specialists in the bargaining unit described in Finding of Fact 5, above, and filed a prohibited practice alleging that the City had refused to bargain with the MPA before establishing the Police Services Specialist position. ALEASP intervened in that case. The parties met with a member of the Commission's staff in an effort to resolve the matter, but were unsuccessful in their efforts. After several postponements, hearings were held on both the unit clarification and the complaint of prohibited practices. The parties agreed that the record in the complaint case would be made a part of the record in the unit clarification. The MPA entered into the stipulation

with the caveats that the MPA would introduce evidence that the MPA had represented nonsworn personnel, specifically matrons, and that Police Services

Specialists had the same authority as any citizen to make an arrest if they witnessed a crime or ordinance violation in progress. The MPA also limited its stipulation with respect to the inclusion of Police Services Specialists in the ALEASP unit, asserting that it was appropriate only if the Commission should decide that they were not eligible for inclusion in the MPA bargaining unit. The MPA did not, in either hearing, ultimately introduce any evidence concerning the inclusion of matrons or other nonsworn employees in the MPA unit.

15. The Police Services Specialists share common supervision and work sites with members of the ALEASP bargaining unit.

16. There is no bargaining history with respect to Police Services Specialists.

17. The Police Services Specialists are civilian municipal employees of the City of Milwaukee who do not possess the power of arrest. The employees in the ALEASP bargaining unit are civilian municipal employees of the City of Milwaukee who do not possess the power of arrest. The officers in the MPA bargaining unit do possess the power of arrest.

18. Failure to include the Police Services Specialists in an existing bargaining unit would cause undue fragmentation of bargaining units in the City of Milwaukee.

19. The Police Services Specialists share a community of interest with employees in the bargaining unit represented by ALEASP.

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

CONCLUSIONS OF LAW

1. The Police Services Specialists are not "members of a police department employed by cities of the first class" within the meaning of Sec. 111.70(4)(jm), Stats.

2. The Police Services Specialists are "municipal employees" within the meaning of Section 111.70(1)(i), Stats., and are appropriately included in the bargaining unit set forth in Finding of Fact 4.

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

ORDER 1/

The City of Milwaukee bargaining unit described above in Finding of Fact 4 be, and hereby is, clarified to include within that unit the position of Police Services Specialist.

Given under our hands and seal at the City of
Madison, Wisconsin this 21st day of October,
1993.

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

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- 1/ 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.

(Continued)

(Continued)

(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.

(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 MILWAUKEE (POLICE DEPARTMENT)

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

Arguments of the Parties

The Position of the Petitioner ALEASP:

ALEASP takes the position that the Police Services Specialist position is appropriately included in the existing ALEASP bargaining unit. Indeed, the parties have so stipulated. ALEASP points out that it is a residual unit of Police Department employees who are not represented in other existing units ("All regular full-time and regular part-time employees employed in the Police Department of the City of Milwaukee, excluding law enforcement personnel with the power of arrest, Police Aides, Heating and Ventilating Mechanics, Maintenance Mechanics, Custodial Workers, professional, craft, confidential, managerial and supervisory employees"). The Police Services Specialists are exactly such employees. They are regular employees of the Police Department who do not fall within the exceptions to the ALEASP unit description, and according to established Commission precedent, should be included in the unit.

As a matter of policy, it is inappropriate, ALEASP contends, to include Police Services Specialists in the MPA bargaining unit. All members of the MPA bargaining unit possess the power of arrest, while none of the Police Services Specialists are so authorized. Employees with the power of arrest are subject to different impasse procedures than are civilian employees. Moreover, the basic function of the employees in the MPA unit is law enforcement, while Police Services Specialists provide technical and clerical support for the law enforcement function. In this respect, their duties are identical to those of the employees in the ALEASP bargaining unit. In short, the MPA bargaining unit is limited to those who are both statutorily and functionally law enforcement personnel. The Police Services Specialists do not fit that description.

The Position of the City of Milwaukee:

The City takes the position that Police Services Specialists are appropriately included in the bargaining unit represented by ALEASP. The Commission's long-standing policy against intermixing employees possessing the power of arrest with civilian employees should be maintained in this case. As the evidence clearly establishes the Police Services Specialists as civilian employees without the power of arrest, they cannot appropriately be included in the MPA unit of police officers nor the MPSO unit of police supervisors.

The Position of the Intervenor Milwaukee Police Association:

The MPA takes the position that Police Services Specialists share a community of interest with the officers in the MPA bargaining unit, and should appropriately be included in that unit. The "bright line" test applied by the WERC, which uses power of arrest as the boundary for police units, should be ignored in this case because the policy reasons for the test are not present.

The bright line test presupposes that there is a conflict between the impasse and strike provisions of the law applicable to different classes of police department employees. The City of Milwaukee Police Department is subject to a different impasse resolution procedure than other law enforcement agencies. Section 111.70(4)(jm), Stats. does not distinguish between employees having the power of arrest and those who do not. By its terms, the interest arbitration statute for the Milwaukee Police Department is applicable to "members" of the department. Nothing in the statute limits "members" of a

department to those having the power of arrest. Logically, the legislature must have intended that all police department employees be subject to the same strike ban and the same interest arbitration procedures. It would make no sense to allow employees without the power of arrest to strike, and thus cripple the effectiveness of those employees who do possess arrest powers. It is far more logical to infer that the legislature intended by the use of the term "members" to include all Police Department employees under the provisions of Sec. 111.70(4)(jm), Stats.

As a device for defining workers with distinct communities of interest, the MPA argues that the bright line test is meaningless in the modern police force, and should be abandoned. While Police Services Specialists do not possess the power of arrest on information and belief, they have the same right as any citizen to make a common law arrest for offenses committed in their presence. Moreover, in this case the bright line test is wholly inadequate as a measure of common interests. Police officers possessing the power of arrest who are on limited duty perform precisely the same work as Police Services Specialists. These officers are assigned to duties which make the exercise of the arrest power irrelevant. Thus a distinction between limited duty members of the Department and Police Services Specialists which is based solely on a power which is purely theoretical and has no real world application to these parties.

As police forces have redefined the concept of policing, the importance of arrest powers has subsided, and alternatives to arrest have taken on greater significance. In combination with the increasing trend towards using civilians to perform jobs traditionally performed by officers with the arrest power, this has blurred the line sufficiently to render powers of arrest a meaningless basis for determining community of interests.

The more reliable measure of a community of interests, the MPA asserts, is the bond between the active duty officer and the retired officer. Police Services Specialists are required to be retired Milwaukee police officers. This requirement plainly indicates that the work performed by these employees requires the skills and encompasses the duties of a member of the MPA bargaining unit.

DISCUSSION:

The parties have stipulated that, should the Commission determine that the Police Services Specialist position are not appropriate for inclusion in the bargaining unit represented by the Milwaukee Police Association, the position should be included in the residual bargaining unit represented by ALEASP. ALEASP and the City argue that inclusion in the ALEASP unit is the only appropriate outcome. The central issue in this case is whether the Commission will apply its well established principle of not intermixing employees possessing the power of arrest with civilian employees to the Milwaukee Police Department. On review of the record as a whole, we find no basis for excepting the Milwaukee Police Department from the principle enunciated in prior cases, and so direct the inclusion of the Police Services Specialists in the ALEASP unit.

The Commission has consistently found that the possession of the power of arrest, and the relationship of a position's duties to the law enforcement function are the determinative factors in deciding the eligibility of a position for inclusion in a unit of law enforcement personnel. 2/ This distinction is premised upon the legislative intent to isolate critical law

2/ Outagamie County (Sheriff's Department) Dec. No. 23203-A (WERC, 2/90).

enforcement personnel from the right to strike by providing a distinct means of dispute resolution, while establishing a limited right to strike and a different impasse procedure for non-critical police agency employees. The differing impasse procedures available for law enforcement personnel under Sec. 111.77, Stats. and non-law enforcement personnel under Sec. 111.70, Stats. would create an untenable situation in implementing interest arbitration or, in limited circumstances, in the event of a strike. 3/

In this case, of course, the officers of the Milwaukee Police Department are not subject to Sec. 111.77, Stats. Sec. 111.70(4)(jm), Stats. provides an interest arbitration system for "members of a police department employed by cities of the 1st class" which is materially different than that provided to law enforcement employees elsewhere and municipal employees in general. The MPA's argument is that the term "members of a police department" is broader than the term "law enforcement personnel" used by the Commission to describe Section 111.77 units, and thus does not draw any distinction between Milwaukee police officers and the civilian personnel of the department. This argument ignores the application of the statutes over a period of years, and draws a distinction that is not supported by the language of the statutes themselves nor the legislative policy underlying the arrest powers test.

If, as the MPA asserts, Sec. 111.70(4)(jm), Stats. is applicable to all municipal employees of the Milwaukee Police Department, it stands to reason that the other bargaining units in the department would have access to the statute's unique issue-by-issue arbitration procedure. Yet there is no history of those units resorting to Sec. 111.70(4)(jm), Stats. Local 218 of IUPA, the petitioner here, represents both the residual unit and the police aides. Both units have in the past invoked the provisions of Sec. 111.70(4)(cm), Stats. to resolve bargaining impasses. 4/ The City, ALEASP and the Commission have consistently treated the provisions of Sec. 111.70(4)(cm), Stats. as applicable to civilian employees in past bargaining disputes, and have thus drawn a practical distinction between "members of the department" (i.e., officers with the power of arrest) and other department employees.

In addition to the prior application of Sec. 111.70(4)(cm), Stats. to department employees, the MPA argument is undermined by the use of the term "members of a police department" in describing the exclusions from Sec. 111.77, Stats. Section 111.77(8)(b), Stats. provides: "This section shall not apply to members of a police department employed by a first class city nor to any city, village or town having a population of less than 2,500." This describes the municipal employees who would be within the scope of Sec. 111.77, Stats. by

3/ Marathon County (Sheriff's Department) Dec. No. 24468 and 20999-A (WERC, 5/87).

4/ City of Milwaukee (Police Department), Case 308, No. 39876, INT/ARB-4703 (12/14/87); City of Milwaukee (Police Department), Case 309, No. 39877, INT/ARB-4704 (12/14/87); City of Milwaukee (Police Department), Case 364, No. 44552, INT/ARB-5772 (9/18/90); City of Milwaukee (Police Department), Case 365, No. 44599, INT/ARB-5782 (9/18/90).

its terms, but for the specific exclusion. Since its enactment, Sec. 111.77, Stats. has been interpreted as being applicable only to firefighters and law enforcement officers having the power of arrest. The need for an exclusion for "members of a police department employed by 1st class cities" indicates that this is a class of employees otherwise entitled to coverage. Thus the drafting of the statute strongly supports the conclusion that the terms "law enforcement personnel" used in Sec. 111.77 cases, and "members of a police department employed by cities of the 1st class" used in Sec. 111.70(4)(jm), Stats. were intended by the legislature to describe the same type of employees.

Beyond the past practice and wording of the legislation, the conclusion urged by the MPA is precluded by the same considerations of legislative intent and public policy that led the Commission to employ the "arrest powers" test in other law enforcement units. The legislature has made a judgment that law enforcement employees possessing the power of arrest play a different and more critical role in maintaining public peace, and accordingly could not enjoy even a limited right to strike. Employees of law enforcement agencies who do not play the same critical role do enjoy a limited right to strike. 5/ We find nothing in the statutes nor in the record of this case to suggest that the legislature intended a different policy with respect to the employees of the Milwaukee Police Department. Granting the MPA's argument that a blurring of job functions has occurred between officers with the powers of arrest and those employees without the power of arrest as a result of shifting job assignments and the placement of limited duty officers in desk jobs, that is a phenomenon which is not unique to Milwaukee and provides no basis for treating the police officers of the City in a different manner than those elsewhere in the state. The critical role of employees with arrest powers in maintaining the public order is the constant across all of the units in the state, and dictates that the Commission continue its policy of refusing to include those employees in bargaining units with civilian employees. 6/

Thus, we have issued an order clarifying that the positions of Police Services Specialist in the Milwaukee Police Department be included in the residual unit represented by ALEASP.

Dated at Madison, Wisconsin this 21st day of October, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

5/ Outagamie County, supra, at pages 6-7.

6/ Even though the result in this case is driven by the policy of not intermixing police officers and civilians, the Commission notes that the Police Services Specialists share a strong community of interests with the employees in the ALEASP unit, as well as falling squarely within ALEASP's certification. Thus, even if their inclusion in the MPA unit was permissible under Commission precedent, we would accrete these employees to the ALEASP bargaining unit.

Herman Torosian /s/

Herman Torosian, Commissioner

William K. Strycker /s/

William K. Strycker, Commissioner