

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
LEER DIVISION OF THE :
WISCONSIN PROFESSIONAL :
POLICE ASSOCIATION : Case IX
Involving Certain Employees of : No. 29814 ME-2111
CITY OF BRILLION : Decision No. 20017
(POLICE DEPARTMENT) :

Appearances

Mr. Thomas A. Bauer, Collective Bargaining Consultant, 206 South Arlington, Appleton, Wisconsin 54911, on behalf of the Petitioner.
Mr. James W. Miller, 1425 Western Avenue, Green Bay, Wisconsin 54303, appearing on behalf of AFSCME.
Mayor Clarence Wolf, City Hall, Brillion, Wisconsin 54110, appearing on behalf of the City of Brillion

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DIRECTION OF ELECTION

LEER Division of the Wisconsin Professional Police Association having on May 21, 1982 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the Police Department of the City of Brillion to determine whether said employees desire to be represented by said Petitioner for the purpose of collective bargaining; and hearing in the matter having been scheduled for July 21, 1982 and having been subsequently postponed at the request of AFSCME and hearing in the matter having ultimately been held on August 18, 1982 at Brillion, Wisconsin before Daniel J. Nielsen, a member of the Commission's staff, during the course of which District Council 40, AFSCME, AFL-CIO, was permitted to intervene in the matter, on the basis of its claim that it was the current bargaining representative; and the parties having filed briefs in the matter, the last of which was received on September 9, 1982, and the City having chosen not to file a brief in the matter; and the Commission having considered the entire record and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Law Enforcement Employee Relations Division of the Wisconsin Professional Police Association, hereinafter referred to as the Association, is a labor organization and maintains its offices at 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226.

2. That the City of Brillion, hereinafter referred to as the City, is a municipal employer and maintains its principal offices at the City Hall in Brillion, Wisconsin; and that among its governmental functions the City maintains and operates a Police Department.

3. That Brillion Police Department Employees Local Union 1362, District Council 40, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization, and maintains its offices at 1425 Western Avenue, No. 3, Green Bay, Wisconsin 54303; and that at all times material herein AFSCME has been the certified exclusive collective bargaining representative of non-supervisory law enforcement personnel in the employ of the City.

4. That the Association initiated the instant proceeding by filing a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all regular full-time law enforcement employees with powers of arrest employed by the City of Brillion, excluding the Chief of Police and all other City employees; that at the hearing on the matter, the Association amended

its petition to describe the desired unit as composed of all regular part-time, and all regular full-time law enforcement employees with powers of arrest employed by the City of Brillion, excluding the Chief of Police, the Lieutenant, and all supervisory, managerial and confidential employees and all other City employees; and that subsequent to the hearing the Association reversed its position with regard to the Lieutenant and sought to have that position included in the bargaining unit.

5. That the description of the appropriate collective bargaining unit, as contained in the certification issued following the election in which AFSCME was selected as the exclusive bargaining representative was as follows:

All regular law enforcement employees with the power of arrest employed by the City of Brillion, excluding the Chief of Police and all other employees of the City of Brillion, . . . ;

that said unit description was incorporated into the recognition clause of the collective bargaining agreement for the year 1982 between the City of Brillion and AFSCME; and that, at the hearing on the instant petition, AFSCME took the position that the unit sought by the Association in its amended petition was appropriate insofar as it included regular part-time employees, but was inappropriate insofar as it sought to exclude the Lieutenant.

6. That the City contends that the Lieutenant should be included in the bargaining unit, but objected to the inclusion of regular part-time employees, on the basis that the inclusion would impact on flexibility in future staffing decisions.

7. That regular part-time Police Department employees having the power of arrest have a community of interest with the regular full-time employees of the City of Brillion Police Department in the negotiation of wages, hours and conditions of employment.

Upon the basis of the above and foregoing Finding of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That regular part-time employees are employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That the following-described collective bargaining unit, constitutes an appropriate collective bargaining unit within the meaning of Section 111.70(1)(e) and Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act:

All regular full-time and regular part-time law enforcement employees with powers of arrest employed by the City of Brillion, excluding the Chief of Police, all supervisory, managerial and confidential employees and all other City employees.

3. That a question concerning representation, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act, has arisen among the employees included in the appropriate collective bargaining unit set forth above.

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

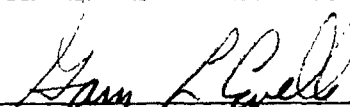
DIRECTION OF ELECTION

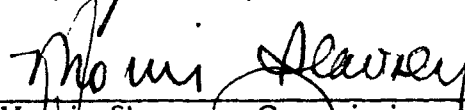
IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission, within forty-five (45) days from the date hereof, in the unit consisting of employees of the City of Brillion employed in its Police Department, who are included in the appropriate collective bargaining unit set forth in the Conclusion of Law, who were employed on October 19, 1982, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by LEER Division of the Wisconsin Professional Police Association, or by Brillion Police Department Employees Local Union 1362, District Council 40, AFSCME, AFL-CIO, or

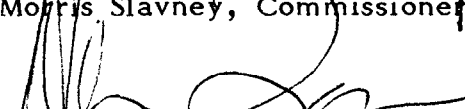
by no organization, for the purposes of collective bargaining with the City of
Brillion on wages, hours and conditions of employment.

Given under our hands and seal at the City of
Madison, Wisconsin, this 19th day of October, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF
OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

I. Status of the Lieutenant

At the hearing conducted on this matter, the Association took the position, contrary to AFSCME, that the Lieutenant should be excluded from the bargaining unit. The City took no position on this issue. In the post-hearing brief submitted in support of its arguments, the Association then withdrew its request to remove the Lieutenant from the bargaining unit. Inasmuch as there is no longer any dispute with respect to the Lieutenant, the position continues to remain in the unit.

II. The Inclusion of Regular Part-time Employees

It is well established that employees who are regularly employed on a part-time basis have a community of interest in wages, hours and conditions of employment with those employees employed on a regular full-time basis. Therefore, such employees may appropriately be included in a unit with the full-time employees. 1/ The City's expressed desire to maintain flexibility in future staffing decisions is not sufficient to overcome the rights of part-time employees to bargain collectively over wages, hours and conditions of employment. Furthermore, the inclusion of such employees in a collective bargaining unit in no way detracts from the right of the City to make its desired staffing decisions. We thus conclude that the unit proposed by the Association in the amended Petition 2/ is appropriate insofar as it seeks to include regular part-time employees. 3/


Dated at Madison, Wisconsin, this 19th day of October, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

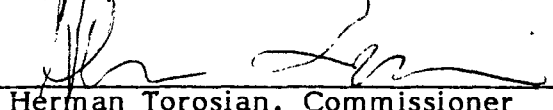
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

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- 1/ See, for example, Hartford Union High School, (No. 15745), 8/77.
- 2/ AFSCME joined the Association in proposing the inclusion of regular part-time employees in the unit.
- 3/ The City indicated at hearing that it did not presently employ any regular part-time officers. The post-hearing brief of the Association, however, makes reference to an Officer Williams, who allegedly has been employed on a regular part-time basis since February of 1982 because of the Lieutenant's absence due to illness. Should such police officer come forward to vote at the election herein ordered, and a dispute arises as to the individual's status as a regular part-time employee, that person shall be allowed to vote by a challenged ballot. If the results of the election are such that the challenged ballot is determinative of the outcome, the Commission will be required to determine that individual's eligibility.