

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION
Involving Certain Employees of
TOWN OF MENASHA
(POLICE DEPARTMENT)

Case 9
No. 33794 ME-2387
Decision No. 22799

Appearances:

Herrling, Clark, Hartzheim & Siddall, Attorneys at Law, by Mr. Roger W. Clark, 301 North Lynndale Drive, Appleton, Wisconsin 54914, appearing on behalf of the Town.

Mr. Thomas A. Bauer, Business Agent, Wisconsin Professional Police Association/LEER Division, 206 South Arlington, Appleton, Wisconsin 54911, appearing on behalf of the Petitioner.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Professional Police Association/Law Enforcement Employee Relations Division having on August 24, 1984, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among law enforcement personnel in the employ of the Town of Menasha (Police Department) to determine whether said employees desire to be represented by said Petitioner for the purposes of collective bargaining; and hearing in the matter having been scheduled for November 12, 1984, and subsequently postponed indefinitely at the request of the parties while they attempted to stipulate to the relevant facts and to file briefs in lieu of a hearing; and, following the receipt of a stipulation of facts and briefs from the parties, hearing in the matter having been rescheduled and conducted on March 11, 1985, at Menasha, Wisconsin, before Douglas V. Knudson, a member of the Commission's staff; and a post-hearing brief having been received from the Petitioners on June 10, 1985; and the Town having advised the Commission on June 19, 1985 that it did not intend to file any additional brief; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, hereinafter referred to as LEER, is a labor organization and has its offices located at 206 South Arlington, Appleton, Wisconsin 54911.

2. That the Town of Menasha (Police Department), hereinafter referred to as the Town, is a municipal employer and has its offices at 1000 Valley Road, Menasha, Wisconsin 54952; and that among its governmental functions the Town maintains and operates a police department.

3. That the Town of Menasha Protective Police Association, hereinafter referred to as the Association, is a labor organization and has an office located at 849 Sixth Street, Menasha, Wisconsin 54952; that following an election conducted by the Commission, the Association was certified on May 31, 1977, as the exclusive bargaining representative of the full-time law enforcement personnel of the Town; and that the Association and the Town were parties to a collective bargaining agreement in effect from January 1, 1983, through December 31, 1984, covering wages, hours and conditions of employment of certain employees of the Town in the following collective bargaining unit;

All full-time law enforcement officers of the Town police department, including all full-time officers with arrest powers and with the rank of Sergeant or below and excluding the Chief Officer and all supervisors.

4. That in the petition initiating the instant proceeding, filed on August 24, 1984, LEER seeks a representation election among all regular full-time and regular part-time law employees of the Town of Menasha Police Department with powers of arrest, excluding supervisory, managerial and confidential employees.

5. That on June 17, 1985, the Commission received a written request from the Labor Association of Wisconsin, Inc., hereinafter referred to as LAW, that its name be placed on the ballot in the election; and that said request was accompanied by a sufficient showing of interest.

6. That after the hearing it was not clear whether the Association wanted to appear on the ballot in the election, but that in a telephone conversation on June 27, 1985, which was confirmed by a letter, the President of the Association advised the Commission that it did want to be on the ballot in the election.

7. That the Town, contrary to LEER, contends that the part-time employees should not be included in the same bargaining unit with the full-time officers because of the following reasons: (1) that during the negotiations for the 1983-84 collective bargaining agreement, the Association withdrew a proposal to include part-time employees in the bargaining unit consisting of full-time employees which unit is now covered by said agreement; (2) that there is a difference in skill levels between the comparatively untrained part-time employees and the certified full-time employees; and, (3) that the part-time officers lack a community of interest with the full-time officers since there are differences in wage rates, regularity of work, number of hours worked, fringe benefits and working conditions between the part-time and full-time employees, and although the part-time employees have worked a substantial number of hours during their employment, they do not work such hours pursuant to a regular schedule.

8. That in January, 1983 the Town reduced the number of full-time police officers from 14 to 12, at which point in time it began using part-time officers; that since January, 1983 the Town has normally employed two part-time officers to replace full-time officers when they have unplanned absences and to fill shifts on each monthly schedule which are not assigned to the full-time officers; that the Town board has no plans at present to change the pattern of use of part-time officers; that, since January, 1983 all full-time vacancies, which have been four, have been filled by moving part-time officers to full-time status; that at the time of the hearing there was only one part-time officer employed, Steven Malchow, because the other part-time officer, Michael Krueger, had recently moved from part-time to full-time status; that Malchow began working as a part-time officer for the Town on or about August 14, 1984, since which date he has worked in every two week pay period; that during the period of August 14, 1984, through December 12, 1984, Malchow worked a total of 491 hours, for an average of approximately 29 hours per week; and that Krueger began working for the Town as a part-time police officer on or about May 26, 1984; and, that during the period of May 26, 1984, through December 8, 1984, Krueger worked a total of 755.25 hours for an average of approximately 27 hours per week.

9. That both the full-time and part-time officers have the power of arrest, wear the same uniforms and badges, carry weapons, have the same supervision, perform similar duties, except that part-time employees may be unable to complete as many investigations of complaints due to time constraints, work out of the same geographic location, work under the same rules and regulations, serve a one year probationary period, are covered by the State Retirement Fund, receive clothing allowances (although part-time employees receive only one half of the amount received by full-time officers) and are assigned to patrol a specific geographic area and perform such patrol alone in a squad car (except that normally part-time officers do not work alone on a shift whereas full-time officers may be the only officers assigned to a shift); that all part-time officers, with the exception of Malchow, have become certified by the State through training programs while employed part-time by the Town; that Malchow is currently enrolled in the necessary training program to acquire such certification; that part-time officers receive a pro-rated payment of health insurance program premiums by the Town whereas full-time officers receive full payment of such premiums by the Town; and that part-time officers do not receive certain other fringe benefits, which are received by full-time officers, for example, vacations, holiday pay, sick leave, etc.

10. That during negotiations for the 1983-84 collective bargaining agreement, the Association made a proposal to include part-time officers in the

bargaining unit consisting of full-time officers covered by said agreement; and that the Association later withdrew its proposals when the then employed part-time officers went to full-time status.

11. That the combination of regularity and frequency of employment and the total hours worked during periods of normal departmental operation by the part-time police officers is sufficient to warrant their being found to be regular part-time employees.

12. That the part-time police officers of the Town of Menasha have a community of interest with the regular full-time employees of the Town of Menasha Police Department in the negotiation of wages, hours and conditions of employment.

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

CONCLUSIONS OF LAW

1. That the part-time police officers employed by the Town of Menasha are regular part-time employees who share a community of interest with the full-time police officers employed by the Town of Menasha, and therefore, are appropriately included in the same bargaining unit.

2. That the following description constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act;


All regular full-time and regular part-time law enforcement employees with the power of arrest employed by the Town of Menasha, excluding supervisory, managerial and confidential 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 of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time law enforcement employees with the power of arrest employed by the Town of Menasha, excluding supervisory, managerial and confidential employees, who were employed by the Town of Menasha on July 19, 1985, 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 said employees voting desire to be represented by the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, or, by the Town of Menasha Professional Police Association, or, by the Labor Association of Wisconsin, Inc., or, by none of said organizations, for the purpose of collective bargaining with the Town of Menasha on wages, hours and conditions of employment.

Given  under our hands and seal at the City of

TOWN OF MENASHA

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

The Town opposes LEER's request to include the part-time employees in the same bargaining unit with the full-time employees for the following reasons: (1) previously during negotiations for the 1983-84 collective bargaining agreement, the Association made, but later withdrew, a proposal to include the part-time employees in the unit of full-time employees; (2) the part-time employees have less experience, training and skills than the full-time employees; and (3) there is no community of interest between the full-time and part-time officers since the full-time employees have different wages, hours and working conditions than do the part-time employees, and further, the part-time employees do not have regular work schedules.

LEER contends that the part-time officers are regular part-time employees who both share a community of interest with the full-time officers over wages, hours and conditions of employment and perform the same duties as the full-time officers. Further, in determining the appropriate unit, the Commission is not bound by the bargaining history of the parties.

It is clear from the record that although the part-time officers do not have regular pre-determined work schedules such as the full-time officers, they do work on a regular and frequent basis, as evidenced by the facts that the two part-time employees, averaged 27 and 29 hours of work per week respectively and that they both worked in every two week pay period. Additionally, after each monthly work schedule for full-time officers is prepared, there are unassigned shifts remaining to which the part-time officers are then scheduled to work. Such assignments of the part-time officers are made prior to the work schedule taking effect. Moreover, the part-time officers are also called to work when full-time officers are absent for unplanned reasons. Thus, it is clear that the Town regularly has work available for the part-time officers, which work the part-time officers perform with considerable consistency. Based on such circumstances the employees can fairly be said to have a reasonable expectation of continued regular part-time employment in the future and are appropriately classified as regular part-time employees. 1/

The record establishes that the part-time officers perform basically the same job duties as are performed by the full-time officers, in addition to having the same supervision and working conditions when on duty. While part-time officers may complete less investigations of complaints than do full-time officers, such is primarily a result of less frequent back-to-back work days for part-time officers rather than for any other reason. Similarly, while a part-time officer, unlike full-time officers, normally would not be the only officer on patrol on a given shift, the part-time officers do patrol in one man squad cars just as the full-time officers do. The differences in wage rates and fringe benefits do not overcome the similarity of duties performed by the part-time and full-time officers.

Similarly, the fact that the part-time officers may have less experience and training than the full-time officers is primarily a result of the fact that the part-time officers have been working as law enforcement officers for shorter periods of time. However, the part-time officers are expected to utilize the same skills in performing the same duties as the full-time officers. Indeed, except for Malchow, all of the part-time officers have become certified by the State while working part-time, even though they frequently did not possess such certification when they commenced their employment with the Town. Further, since January, 1983 the Town has filled all of its vacancies for full-time officers with part-time officers already in its employ. Consequently, we do not find there is a sufficient difference in skills, training and/or experience to justify the creation of separate bargaining units for the full-time and part-time officers.

1/ See City of Milton, Dec. No. 13442-A (WERC, 6/83); Town of Grand Chute, Dec. No. 19870 (WERC, 9/82)

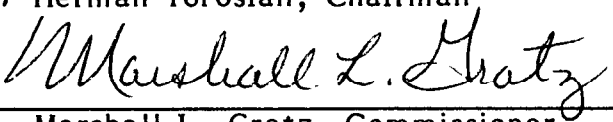
The fact that the parties may have bargained over the status of the part-time officers in prior negotiations is not controlling in an election proceeding where the description of the appropriate bargaining unit is at issue as is the case herein. The Commission is mandated by the statutes to determine appropriate collective bargaining units, while avoiding fragmentation of such units. Since the part-time officers are regular part-time employees having duties and skills similar to the full-time officers, the part-time officers do share a community of interest with the full-time employees and appropriately are included in the same bargaining unit as the full-time officers. The creation of a separate bargaining unit consisting only of the part-time officers would result in undue fragmentation and would be inappropriate.

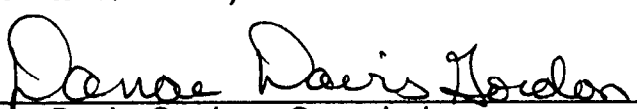
Dated at Madison, Wisconsin this 19th day of July, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner