

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of
**WISCONSIN PROFESSIONAL
POLICE ASSOCIATION/LEER DIVISION**

and

AFSCME COUNCIL 40

Involving Certain Employes of

CITY OF FITCHBURG

Case 8
No. 55014
ME-879

Case 14
No. 55227
ME-890

Decision Nos. 24079-C and 26874-C

Appearances:

Mr. Richard Thal, General Counsel, Wisconsin Professional Police Association, 7 North Pinckney Street, Suite 220, Madison, Wisconsin 53703, appearing on behalf of the Wisconsin Professional Police Association/LEER Division.

Mr. Michael J. Wilson, Representative-at-Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of the American Federation of State, County and Municipal Employees Council 40.

Ms. Norma DeHaven, City Administrator, City of Fitchburg, 2377 South Fish Hatchery Road, Fitchburg, Wisconsin 53711, appearing on behalf of the City of Fitchburg.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT**

On March 21, 1997, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (WPPA/LEER) filed a Petition to Clarify Bargaining Unit with the Wisconsin Employment Relations Commission, by which it sought the inclusion of the newly created position of Code Enforcement Officer into a bargaining unit of employees of the City of Fitchburg which it represents. On April 11, 1997, the American Federation of State, County and Municipal Employees (AFSCME) Council 40 filed a like petition. The City declined to take a position on either petition.

Hearing in the matter of the petitions was held before Examiner Douglas V. Knudson, a member of the Commission staff, on June 25, 1997, with a stenographic transcript being available to the parties by July 25, 1997. The parties all waived their right to file written arguments and made oral position statements on the record.

The Commission, now being advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein WPPA/LEER, is a labor organization with offices at 7 North Pinckney Street, Madison, Wisconsin.

2. The American Federation of State, County and Municipal Employees Council 40, herein AFSCME, is a labor organization with offices at 8033 Excelsior Drive, Madison, Wisconsin.

3. The City of Fitchburg, herein the City, is a municipal employer with offices at 2377 South Fish Hatchery Road, Fitchburg, Wisconsin.

4. At all times material, WPPA/LEER has been the bargaining representative for City employees in a unit described in the most recent collective bargaining agreement as:

all full-time police assistants and dispatchers employed by the City of Fitchburg, excluding appointed and elected officials, the Chief, sergeants, police officers, employees with the power to arrest and part-time, special, temporary, seasonal, supervisory, managerial and confidential employees as certified by relevant WERC decisions.

5. At all times material, AFSCME has been the collective bargaining representative for City employees in a unit described in the most recent collective bargaining agreement as:

all regular full-time and regular part-time employees of the City of Fitchburg, excluding confidential, supervisory, managerial, craft, law enforcement employees with the power of arrest, and professional employees and employees in existing bargaining units.

Included in this bargaining unit are such positions as Utility Custodian, Secretary/Receptionist, Fiscal Clerk, Engineer Technician, Assistant Zoning Administrator and Planner and Assistant Building Inspector.

6. The City employs a Police Assistant/Animal Control Officer, included within the bargaining unit described in Finding of Fact 4, and with the following Position Description:

**CITY OF FITCHBURG
Position Description**

Name:

Date:

Position Title: Police Assistant/
Animal Control Officer

Reports To: Shift Sergeant

Pay Grade: 6

Position Summary:

Under the general direction of the shift sergeant, insures that all animal control activities are performed in an efficient and timely fashion. Enforces existing ordinances, captures stray animals, and provides maintenance on vehicles. Decisions within areas of responsibility are made independently. Supervision received is general. Overall work plans are discussed with periodic review of progress. There is no supervisory responsibility. There is frequent interaction with the general public.

Duties/Responsibilities:

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive; other duties may be required and assigned.

50% A. Insure prompt, efficient service regarding problems and programs concerning animal cases.

1. Interprets and enforces existing ordinances.
2. Submits reports concerning animal complaints, issuance of warnings and court citations.

3. Physically captures and transports animals. Releases to owner, if possible; if not, transports to the Human Society.

4. Provides safe location for captured animals in adverse weather conditions.

5. Enforces rules and regulations concerning vaccination, prohibited animal conduct, and animal abuse cases.

6. Determines appropriate equipment to be used, including use of a catch pole, live traps, or tranquilizer dart, to control animals.

7. Explains ordinances and policies concerning animal control to the general public.

30% B. Provide proper maintenance of vehicles and other City equipment.

1. Determines needs and makes necessary repairs of City equipment.

2. Makes arrangements for repairs to be performed by outside sources when necessary.

3. Develops and implements a preventative maintenance program and record keeping system, and schedules maintenance and repair work.

4. Provides general building maintenance functions.

20% C. Provide general support services as needed.

1. Relieves dispatchers during breaks or other periods of absence.

2. Picks up and delivers supplies.

3. Assists with traffic control as requested.

Knowledge and Ability:

Knowledge of animal behavior and containment techniques. Ability to deal effectively with the general public.

Qualifications:

High school diploma. No experience required.

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ANIMAL CONTROL OFFICER

Job Summary

The worker is responsible for catching, handling and transporting small animals within the City. The worker usually deals with live animals, but animal carcasses are occasionally handled. Typical procedure is for the worker to either lure the animal into a cage or use a "catch pole" to physically maneuver the animal into the cage. Once the animal is in the cage, it is transported into the back of a pick-up truck. The worker must also transport "live traps" containing small animals which have been trapped in the cage. The combination of the animal and cage weighs up to 40 pounds. Larger animals are lured into a larger cage mounted in the back of the truck.

The worker must occasionally handle and transport larger animals which can weigh up to 100 pounds or more. An example is the need to remove a deer carcass from the street. The frequency of these heavy lifts is rare. The frequency of the more typical animal handling cases is variable, but averages approximately five per week.

The worker spends a significant amount of time driving the animal control truck. The worker must possess appropriate total body strength, especially in the arms. Animals can be unpredictable and forceful in their actions. The worker must constantly be aware of safety practices, especially while around aggressive animals. Sight, hearing ability and physical agility are necessary for the avoiding accidents and dangerous situations. When working with an animal, the worker is almost always outside. Work tasks are often performed in less than ideal weather conditions.

Essential Functions

1. The ability to endure prolonged driving of Animal Control Vehicle.
2. The ability to safely handle a variety of animals, both tame and wild.
3. The ability to lift and transport animals weighing up to 40 pounds from ground to cage in the bed of a truck.
4. The ability to perform tasks in a wide variety of terrain and environmental conditions.

Testing Recommendations

1. The ability to safely lift 40 pounds from ground to waist level (to simulate the handling of an average size animal).

7. The City has created the position of Code Enforcement Officer, with the following Position Description:

**CITY OF FITCHBURG
POSITION DESCRIPTION**

POSITION: Code Enforcement Officer

REPORTS TO: Assigned Supervisor

DIVISION/DEPT: Public Safety

REVISION DATE: 3/3/07

Position Summary:

Under general supervision of the assigned supervisor, performs routine police department service duties that do not require the performance of a sworn officer, including parking enforcement, and performing inspection duties to ensure compliance with other municipal codes, including erosion control enforcement, recycling complaints, offenses against public policy [Chapter 14, City of Fitchburg Ordinances] and zoning enforcement according to City of Fitchburg General Ordinances, Wisconsin Administrative codes, Wisconsin State Statutes and Regulations. This position has work contacts with co-workers, contractors, home owners and general public.

Duties and Responsibilities:

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive; other duties may be required and assigned.

- I. Municipal Code Enforcement
 - A. Enforce City, State and Federal parking restrictions through the issuance of parking tickets, and when required, having illegally parked vehicles towed.
 - B. Perform scheduled and unscheduled site inspections for public and private buildings to ensure compliance with applicable codes.

1. Maintain records of inspections and instructions issued pursuant to department policies and procedures.
 2. Issue orders to correct violations of applicable City, State or Federal codes and conduct follow-up inspection for compliance.
 3. If compliance is not achieved, prepares file documents for prosecution by City attorney. Testify at court proceedings.
 4. Assist Building Inspection, Zoning and Public Works Departments in enforcement of erosion code, zoning code and the recycling ordinance.
 5. Enforce Chapter 14 and Chapter 18 of the Fitchburg Code of Ordinances.
- C. Perform erosion control inspections on all projects for which building a permit has been issued. Further assist in setting target areas for non-compliance enforcement. Conduct inspections, issue appropriate orders and perform follow-up inspections.
- D. Use TIME computer system as necessary for enforcement duties, locate landlords and absentee owners through use of the plat book or other means of location.

II. Community Relations and Complaint Resolution

- A. Respond to questions and complaints from business owners, contractors, home owners and citizens regarding compliance with parking regulations, erosion control, recycling ordinances, zoning codes, offenses against public policy and other nuisances.
- B. Investigate and complete required police forms for various minor complaints that are required for insurance purposes.

- C. Perform scheduled and unscheduled inspections in response to nuisance complaints, including verification of complaint, encouraging voluntary compliance, issue orders to correct violation, conduct follow-up inspection for compliance.
- D. Provide assistance to police officers and building inspectors for public information programs.

III. Reports, Records and Other Duties

- A. Complete daily log (name, address, time spent, department initializing contact of all enforcement activity including self-initiated code enforcement, resident contacts, or other time spent in performance of duties for a specific department.
- B. Complete monthly reports to summarize all activity including percentage of time spent in each enforcement area, and noting any problem areas or other areas of concern that may require follow-up or further action.
- C. Maintain various records and files; maintain the police department video library and related equipment.
- D. Perform other inspections and duties; prepares reports as assigned or required.

Other characteristics and requirements of the position.

Physical Demands:

Position works in office setting approximately 15-25% of the time, with the remaining 75-85% of the time being spent in the field. The amount of time spent in the field varies based on the time of year and the needs of the City. Frequent standing, sitting, walking, driving, reaching, hearing, using keyboard, talking, using telephone, working alone and contact with the general public. Employee must be able to frequently stoop, kneel, crouch, crawl, and climb stairs and ladders. Occasionally lift up to 50 lbs. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception and ability to adjust focus.

Environmental Conditions:

Position exposed to extremes in temperatures associated with the elements including heat, cold, wind and other inclement weather. Occasional exposure to hazards or risk of bodily injury, noise, vibration and dust. Infrequent exposure to odors, toxic conditions and poor ventilation.

Language Development:

Able to read and understand codes, statutes, technical journals, manuals, instructions and rules. Able to write reports with proper format, punctuation, spelling and grammar, using all parts of speech. Able to speak clearly and distinctly with correct pronunciation to individuals or groups.

Relationships to Data, People and Things:

Able to examine and evaluate data. Able to gather, collate and classify information about data, people or things. Able to transcribe or post data. Able to talk with and/signal people to convey or exchange information. Able to attend to the needs, requests or the expressed or implicit wishes of people. Able to respond immediately. Able to use hand-eye coordination and perform repetitive movements; allowed some latitude for judgment with regard to precision attained and selecting appropriate tool, object or material.

Communications:

Strong verbal and written communication skills. Ability and experience in personally preparing effective written reports and correspondence, and delivering effective oral communications. Ability to communicate effectively with the public and co-workers. Ability to establish and maintain effective working relationships with City elected and appointed officials, co-workers and the general public. Ability to follow written and verbal instructions.

Personal Attributes:

Possess complete personal and professional integrity and honesty, and have a high sense of professional ethics. Have a record of continuing education, professional development, and involvement in professional organizations that demonstrate a commitment to staying abreast with current trends and new ideas in the field.

Other Knowledge, Skills and Abilities

Ability to think logically to make decisions; interpret information in mathematical, written and diagram form, such as statistical reports. Ability to foster cooperation and teamwork among peers. Ability to identify and analyze problems, evaluate alternative solutions and make sound judgments, especially in stressful situations.

Desired Qualifications for the Position

Construction knowledge beneficial
General knowledge of the location and streets in the City of Fitchburg
Working knowledge of report writing
Working knowledge of computer, calculator, mobile telephone, two-way radio
Ability to operate a motor vehicle
Ability to read and interpret municipal ordinances
Ability to uniformly enforce regulations and codes and to obtain conformance with the same.
Considerable ability to organize and expedite workload.
Considerable ability to initiate work projects and to work independently.

Required Qualifications for the Position

High School Diploma or equivalent
Associate degree
Valid Wisconsin driver's license
Ability to obtain CPR Certification and Erosion Control Certification within 6 months of employment
Pass a pre-employment physical and drug screening
Pass an extensive back-ground check
Twelve month probation

The subject position was not filled at the time of hearing. A Police Sergeant and the Building Inspector will serve on the initial hiring committee, because the position's time will be split between police and inspection duties. The incumbent will initially report to the Police Sergeant, later transferring to the Building Inspector's supervision, although both of said employees will share the supervision of the position. The position was originally budgeted as a police department position, but later was amended to be considered within the "other public safety" line. The public safety budget includes the police, fire and building inspection departments. The positions of Building Inspector and Assistant Building Inspector also are assigned to the public safety department. The initial work site will be in the police department offices, which are approximately two miles away from City Hall, because there is no available office space in the current City Hall. The City plans to begin construction of a new City Hall in November of 1997. When the new City Hall is constructed, plans call for police personnel to occupy the ground floor and basement, while this position will be assigned to an office cubicle on the second floor along with the City's building, engineering, utilities, and zoning personnel.

The position will work 2,080 hours annually, as do the positions included within the AFSCME unit, rather than the annualized 1,950 hours worked by all of the positions within the WPPA/LEER unit.

The initial pay range will be \$396 - \$421 weekly, approximately pay grade five in the AFSCME contract and within pennies of the wages for dispatchers and police assistants in the WPPA/LEER contract. The City may reconsider the current requirement of an Associate Degree in an unspecified field by making the degree a preferred qualification, but will maintain the requirement of ability to obtain Erosion Control Certification within six months of hire, which is necessary to enforce the erosion control ordinance. The position description for the Police Assistant/Animal Control Officer does not require any post-high school education or training. Post-high school education and/or training is required for the positions of Assistant Assessor, Building Inspector, Assistant Building Inspector and Assistant Zoning Administrator.

The Code Enforcement Officer will be expected to testify in court proceedings concerning citations issued by said employe. The Building Inspector, the Assistant Building Inspector, the Recycling Coordinator, the Public Works Director and the City Planning/Zoning Administrator all have authority to issue citations for code violations and can be called to testify in court proceedings concerning those citations. Police officers have been enforcing the parking regulations. The Zoning Administrator has been enforcing the zoning codes and the Project Manager of the Recycling Department has been enforcing the recycling ordinance.

The incumbent will be assigned a four-wheel-drive Jeep which will be equipped with a light bar (red and blue lights on a police squad car) and police decals and will be marked with the words "Code Enforcement Officer" and "Police". Said vehicle may be used by police officers during inclement weather. However, the employe will not dress in uniform, in order to facilitate the outreach and educational responsibilities related to the zoning and building code function. The Animal Control Officer is assigned a pickup truck bearing the words "City of Fitchburg Police Department" and "Animal Control".

8. The position of Code Enforcement Officer falls within the scope of the bargaining unit description set forth in Finding of Fact 5 and, alternatively, has a greater community of interest with the positions included in the bargaining unit described in Finding of Fact 5 than with the positions in the unit described in Finding of Fact 4.

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

CONCLUSION OF LAW

The position of Code Enforcement Officer is appropriately included in the bargaining unit described above in Finding of Fact 5.

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

ORDER CLARIFYING BARGAINING UNIT

The position of Code Enforcement Officer be, and hereby is, included in the bargaining unit described above in Finding of Fact 5.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

CITY OF FITCHBURG

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

POSITIONS OF THE PARTIES

The parties waived their right to file written arguments, instead making brief statements at the opening and close of the hearing.

In support of its position that the Code Enforcement Officer should be accreted into its unit, the WPPA/LEER asserts that the indicia of community of interest (especially the issuing of parking tickets which are now issued by police officers and the fact that the employe will communicate with City Hall through the dispatch center just as the police officers do) indicate a closer relationship of the subject position with the Police Department than with any other area in city government. In particular, WPPA/LEER states that the issuance of parking tickets will assume a larger role, from both a revenue and political perspective. Further, the initial supervision of the position will be directly through the Police Department.

In support of its position that the Code Enforcement Officer should be accreted into its unit, AFSCME states that the subject position's planned location in the new City Hall with other building and zoning personnel on the second floor, rather than with police personnel on the ground floor and basement, shows where the primary interaction will be. AFSCME also states that the description of the residual bargaining unit appropriately includes this position.

The City made no argument as to the appropriate placement of the position.

DISCUSSION

When considering the appropriate unit placement of a position, the parameters of the existing unit or units is a relevant and sometimes dispositive consideration. MANITOWOC COUNTY, DEC. NO. 26743-B; PIERCE COUNTY, DEC. NO. 27487 (WERC, 12/92); BROWN COUNTY, DEC. NO. 15559-A (WERC, 1/91); WALWORTH COUNTY, DEC. NO. 18271-A (WERC, 12/90). Here, AFSCME correctly argues that it represents a residual unit of all City employes not included in other units. The LEER unit is limited by its terms to police assistants and dispatchers. Thus, the Code Enforcement Officer falls within the scope of the AFSCME unit and should be placed therein.

In the alternative, the same result is reached when we engage in an analysis of whether it is appropriate to add employes to an existing unit. When resolving such issues, we consistently consider the following factors:

1. Whether the employes in the unit sought share a "community of interest" distinct from that of other employes.

2. The duties and skills of employes in the unit sought as compared with the duties and skills of other employes.
3. The similarity of wages, hours and working conditions of employes in the unit sought as compared to wages, hours and working conditions of other employes.
4. Whether the employes in the unit sought share separate or common supervision with all other employes.
5. The degree to which the employes in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. ARROWHEAD UNITED TEACHERS V. WERC, 116 Wis.2d 580 (1984).

As the Commission stated in NORTHEAST TECHNICAL COLLEGE, DEC. NO. 11602-A, (WERC, 11/95):

We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the employes participate in a shared purpose through their employment. We have also used the phrase "community of interest" as a means of determining whether employes share similar interests, usually -- though not necessarily -- limited to those interests reflected in Factors 2-5. This definitional duality is of long-standing, and has received the approval of the Wisconsin Supreme Court. 2/ citing ARROWHEAD UNITED TEACHERS V. WERC, 116 Wis.2d 580, 592 (1984)

The fragmentation criterion reflects our statutory obligation to "avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal workforce." Section 111.70(4)(d)2. a., Stats.

The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employes have been unrepresented, an analysis of the development and operation of the employe/employer relationship. MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91).

Based upon long standing Commission precedent, we believe it is well understood by the parties that within the unique factual context of each case, not all criteria deserve the same weight SHAWANO-GRESHAM SCHOOL DISTRICT, DEC. NO. 21265 (WERC, 12/83); GREEN COUNTY, DEC. NO. 21453 (WERC, 2/84); MARINETTE COUNTY, DEC. NO. 26675 (WERC,

11/90) and thus a single criterion or a combination of criteria listed above may be determinative. Common purpose, MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NOS. 20836-A and 21200 (WERC, 11/83); similar interests, MARINETTE SCHOOL DISTRICT, supra; fragmentation, COLUMBUS SCHOOL DISTRICT, DEC. NO. 17259 (WERC, 9/79); bargaining history, LODI JOINT SCHOOL DISTRICT, DEC. NO. 16667 (WERC, 11/78).

We conclude that the preponderance of the evidence establishes that the greater community of interest for the Code Enforcement Officer is with the residual unit represented by AFSCME.

In particular, we find that the relevant skills and qualifications, hours, and workplace, all argue for inclusion in the AFSCME unit. The code enforcement for which the subject position will be responsible primarily relates to erosion control, recycling and zoning, all duties which bear a substantial relationship to the functions of the zoning and building inspection personnel already in the AFSCME unit, and no relationship to the Police Assistant/Animal Control Officer's tasks of trapping animals and disposing of their carcasses. The position will have daily and annual work hours akin to the AFSCME unit rather than the WPPA unit. The incumbent will need to obtain a special certification (erosion control) which is relevant only to the AFSCME unit's duties. While the incumbent will drive a vehicle quite similar to law enforcement vehicles and will issue tickets for parking violations, the incumbent will not wear a uniform, in order to facilitate educational and outreach efforts relevant to the zoning and building codes. Finally, the position will have a permanent workplace in the immediate vicinity of the AFSCME building and zoning personnel who perform related duties, on a separate floor from the WPPA personnel.

Given all of the foregoing, we find that the AFSCME residual bargaining unit is more appropriate than the WPPA/LEER bargaining unit for this new position, and have so ordered.

Dated at Madison, Wisconsin this 8th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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