

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 Employes of
CITY OF MENASHA

Case 66
No. 37359 ME-2609
Decision No. 24446

Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Mr. Steve Dettinger,
20 North Carroll Street, Madison, Wisconsin 53703, appearing on behalf
of Wisconsin Professional Police Association/LEER Division.
Mr. Gregory N. Spring, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, 1121 Winnebago Avenue, Oshkosh, Wisconsin 54901, appearing on
behalf of Local Union 1035-B, AFSCME, AFL-CIO.
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. James R. Macy, 219
Washington Avenue, P. O. Box 1278, Oshkosh, Wisconsin 54902, appearing
on behalf of the City of Menasha.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER
DISMISSING PETITION FOR ELECTION

Wisconsin Professional Police Association/Law Enforcement Employee Relations
Division, having on July 31, 1986, filed a petition requesting the Wisconsin
Employment Relations Commission to conduct an election, pursuant to
Sec. 111.70(4)(d) of the Municipal Employment Relations Act, in a collective
bargaining unit consisting of all dispatchers, complaint clerks and clerk stenos
in the City of Menasha; and the Commission having thereafter attempted to resolve
the dispute; and a hearing in the matter having been conducted on October 3, 1986,
in Menasha, Wisconsin, before Examiner David E. Shaw; and at the outset of the
hearing Local Union 1035-B, AFSCME, AFL-CIO, having been permitted to intervene in
the matter on the basis of the fact that it is the current bargaining
representative of the employes covered by the petition; and a stenographic
transcript of the proceedings having been prepared; and the parties having
submitted post-hearing briefs, the last of which was received on November 13,
1986; and the Commission, being fully advised in the premises, makes and issues
the following

FINDINGS OF FACT

1. That the City of Menasha, hereinafter referred to as the City, is a
municipal employer having its offices at 175 Main Street, Menasha, Wisconsin; and
that among its government functions, the County maintains and operates a number of
departments, including a police department.

2. That Wisconsin Professional Police Association/Law Enforcement Employee
Relations Division, hereinafter referred to as WPPA, is a labor organization and
has its offices at 7 North Pinckney Street, Madison, Wisconsin.

3. That Local 1035-B, AFSCME, AFL-CIO, hereinafter referred to as AFSCME,
is a labor organization and has its offices located at 1121 Winnebago Avenue,
Oshkosh, Wisconsin.

4. That on July 31, 1986, WPPA filed a petition requesting the Commission
to conduct an election among the dispatchers, complaint clerks and clerk stenos
in the City of Menasha; that at the hearing in the instant matter WPPA amended its

petition to request an election among the dispatchers and complaint clerks employed in the police department in the City of Menasha; that WPPA contends the dispatchers and complaint clerks in the police department should constitute a separate bargaining unit or, alternatively, should be accreted to the existing bargaining unit of law enforcement employees with the power of arrest; and that the City and AFSCME oppose the petition filed by WPPA.

5. That, following an election conducted by the Commission, on September 9, 1986, 1/ the Commission certified WPPA as the representative of a bargaining unit consisting of all regular full-time and regular part-time law enforcement officers with the power of arrest with the rank of sergeant and below employed by the City of Menasha, excluding supervisory, managerial and confidential employees; and that prior to said certification of WPPA as the representative, the law enforcement bargaining unit was represented by the Menasha Professional Police Association, Local 34.

6. That, following an election conducted by the Commission, AFSCME was certified on June 30, 1980, 2/ as the bargaining representative of certain city employees which unit is described in the 1985-86 contract between the City and AFSCME as all regular full-time and regular part-time employees of the Menasha City offices and all of the regular full-time and regular part-time non-deputized employees of the Menasha Police Department, excluding elected officials, managerial, supervisory, confidential, temporary employees and the garage clerk; and that the complaint clerks and dispatchers were added to the City Hall unit in approximately 1967; and that bargaining unit employees work in several departments, including the Police Department, Department of Public Works, Finance-Treasurer Office, Personnel Department and Public Health Department.

7. That the City Hall bargaining unit consists of 30 positions (including one vacancy) of which five are complaint clerks and eight (including one vacancy) are dispatchers; and that the other 17 positions consist of office clerks, clerk stenographers, clerk typists, engineering aides, public health aides, building inspectors, receptionists and custodians.

8. That the complaint clerks, dispatchers, one receptionist and a custodian are employed in the City's Police Department which is located in the Public Safety Building approximately three blocks from City Hall; that the one public health aide works in a building approximately one quarter mile from City Hall; and that the rest of the City Hall bargaining unit employees work in City Hall.

9. That vacancies for dispatchers and complaint clerks are filled through the same basic process as any other vacancy in the City Hall bargaining unit which is as follows: Posting of the vacancy for bid by bargaining unit employees, advertising to the general public, screening of applicants by the personnel director and the involved department head or designee, and final selection by the personnel committee and department head; that the dispatchers and complaint clerks are hired by the supervisory employees of the Police Department, while employees in other departments are hired by the supervisory employees in the respective departments; that dispatchers and complaint clerks are supervised by supervisory employees of the Police Department, while other bargaining unit employees are supervised by the supervisors of the departments in which they work; that discipline of City Hall bargaining unit employees is handled by the supervisors of the department in which the employee works; that the personnel committee reviews such disciplinary matters only when the discipline is appealed to it; and that discharge of law enforcement employees with the power of arrest is reviewed by the Police and Fire Commission rather than the personnel committee.

10. That the primary duties of dispatchers involve communications functions, including the receipt of emergency calls for various law enforcement and firefighting agencies and the dispatching of units in response to such calls, the receipt and disposition of non-emergency calls, running the teletype and maintaining the files; that all communications are entered into a computer log; that dispatchers spend approximately 90 percent of their time typing on either the

1/ City of Menasha, Dec. No. 23858, (WERC, 9/86).

2/ City of Menasha, Dec. No. 2452, (WERC, 6/80).

computer keyboard or a typewriter; that dispatchers may have to alert various units and agencies to severe weather conditions or other emergency government situations; that the dispatchers are trained to operate the teletype and computer systems; that dispatchers have ridden in patrol squad cars to better relate to patrol work; that four dispatchers have been trained to perform emergency rescue operations as part of a boat rescue squad; and that one dispatcher has been trained as a negotiator assistant for the police department's SWAT team which involves taking notes for the negotiator.

11. That the position of complaint clerk primarily involves communication functions consisting of the receipt of information from the public through telephone or walk-in sources, which information is entered into the computer system, and the typing of dictated reports from police officers; that complaint clerks also maintain files, collect license fees, and collect fines; and that at least one complaint clerk has been trained in emergency rescue operations as part of a rescue boat squad.

12. That complaint clerks and dispatchers do not have the power of arrest, do wear uniforms while on duty, do not carry weapons while on duty, do work rotating shifts to provide coverage on a 24 hour day and a seven day per week basis, including holidays and weekends, have performed matron duties in the presence of a sworn police officer on the average of approximately one time a year each, have been called as witnesses in court on law enforcement procedures, and have received different training than received by sworn police officers.

13. Except for the receptionist and the custodian at the safety building, there is limited contact between the complaint clerks and dispatchers and the other bargaining unit members; that the other bargaining unit employees do not wear uniforms while on duty; that many of the other bargaining unit employees also work at computer terminals and/or typewriters for varying portions of their work days; that the other bargaining unit employees, except for a second shift custodian at the safety building, normally work from either 7:30 a.m. to 3:30 p.m., 8:00 a.m. to 4:00 p.m., or 9:00 a.m. to 5:00 p.m. Monday through Friday; that several employees, at least three, have transferred from a dispatcher position to other bargaining unit positions in City Hall through the contractual posting procedure; that one dispatcher has become a law enforcement officer with the power of arrest; and that one dispatcher has transferred to the Department of Public Works bargaining unit.

14. That on September 26, 1986, WPPA submitted to the Commission a written request for the consolidation of the instant matter with two other election cases involving employees of Marinette County and Marathon County.

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

CONCLUSIONS OF LAW

1. That the dispatchers and complaint clerks share a sufficient community of interest with the other City Hall employees to constitute a part of an appropriate City Hall bargaining unit; and that a separate bargaining unit consisting only of dispatchers and complaint clerks in the police department would result in an undue fragmentation of bargaining units under Sec. 111.70(4)(d)2.a. Stats., and thus would be inappropriate for the purposes of collective bargaining.

2. That because the dispatchers and complaint clerks do not have the power of arrest, they are not law enforcement personnel within the meaning of Sec. 111.77, Stats., and thus are not appropriately included in a bargaining unit with the police officers of the City who possess the power of arrest.

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

ORDER 3/

1. That the motion to consolidate is denied.
2. That the election petition filed in this matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 27th day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

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- 3/ 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.

(a) Proceedings for review shall be instituted by serving a petition therefor 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

(Footnote 3 continued on Page 5)

(Footnote 3 continued from Page 4)

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 MENASHA (POLICE DEPARTMENT)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
DISMISSING PETITION FOR ELECTION

BACKGROUND

The instant petition raises the issues of whether a separate unit of police department dispatchers and complaint clerks should be created or whether, in the alternative, said employes should be severed from the existing AFSCME unit and placed in the law enforcement unit represented by the WPPA.

POSITION OF WPPA

WPPA contends that several factors used by the Commission in establishing bargaining units support a separate unit for dispatchers and complaint clerks. WPPA believes that the law enforcement employes do not share a community of interest with other City Hall employes, since they do not have a common purpose. The dispatchers and complaint clerks of the police department are charged with performing essential and distinctive law enforcement tasks which differ from the basic clerical duties of the other City Hall employes who work in a wide variety of departments. The manner in which the police department is organized and supervised, the hours and conditions of work, and the frequent isolation in separate facilities creates an identification within the police department not common to other municipal departments. While both the City Hall and the police department employes perform clerical duties, the complaint clerks and dispatchers perform additional duties of greater responsibility which require greater skills. The dispatchers and complaint clerks must make high stress decisions and spend a great percentage of their time dealing with the public in stressful situations. Some of the dispatchers are trained to participate in specialized functions such as boat patrols. All of the dispatchers and complaint clerks can be called upon to perform matron duties or to accompany prisoners, and to testify in court proceedings. One dispatcher has been trained to serve as the aide of the police negotiator in hostage situations. These distinctive skills and specialized training distinguish the dispatchers and complaint clerks from the other City Hall employes. Further, the dispatchers and complaint clerks have separate supervisors, separate work sites and different working hours than do the City Hall employes. The police department employes in question also have unique concerns which are not shared by the other City Hall employes, such as, shift differentials and uniform allowances. There has also been a lack of communications between the City Hall employes and the police department employes as evidenced by problems arising in the filing of grievances, the proposals in negotiations and general communication of information. Also, the bargaining unit meetings are scheduled to coincide with the work schedules of the City Hall employes, which times are often inconvenient for the complaint clerks and dispatchers.

If the Commission does not find a separate bargaining unit for the dispatchers and complaint clerks to be appropriate, then those positions should be included in the existing bargaining unit of sworn police officers. In the past, dispatcher and complaint clerk positions were filled by regular police officers. Today, civilians usually fill these positions because employers no longer wish to pay sworn officers to perform these duties. However, the civilian employes maintain a greater community of interest with the sworn officers than with other City Hall employes.

The need to restrict the special provisions of Secs. 111.70 and 111.77 to law enforcement personnel can be met by a broader and more practical rule than the Commission has been applying. Those statutes do not require the restriction of law enforcement units to only those employes having the power of arrest. The WPPA urges the Commission to adopt the following simple and fact-specific test for defining the scope of law enforcement units: an employe shall be eligible for inclusion in a law enforcement unit when that employe performs traditional law enforcement specific tasks (including police patrol, criminal investigation, jail duty, dispatching and the serving of process) or performs support services, as a majority of that employe's duties, for a law enforcement department within a law enforcement facility and under law enforcement supervision. The WPPA urges the Commission to take this opportunity to amend its case law and to permit

dispatchers and complaint clerks without the power of arrest to join the bargaining unit of sworn officers in which they naturally belong.

POSITION OF AFSCME

AFSCME takes the position that the dispatchers and complaint clerks are presently represented in an appropriate unit and that the petition for election filed by WPPA should be dismissed.

The unit proposed by WPPA would exclude the receptionist who works in the police department and has regular contact with the complaint clerks. Further, with the exceptions of hours of work, uniforms and shift differentials, the complaint clerks and dispatchers share a strong community of interest with the employes working in City Hall. The typing and computer operation duties and skills of the complaint clerks and dispatchers are similar to many of the positions in City Hall. While the complaint clerks and dispatchers are supervised by police department employes, the same is true of the City Hall employes who are supervised by their respective department supervisors. Further, the personnel committee retains ultimate control over all departments, including the police department, with regard to the hiring of nonsworn employes, the discipline of employes and the resolution of grievances prior to arbitration. While the complaint clerks and dispatchers do work in a building separate from City Hall, so do other employes such as the receptionist and custodian who also work at the safety building and the public health aide who is in a separate location.

Furthermore the bargaining history supports the inclusion of the complaint clerks and dispatchers in the same unit as the City Hall employes. AFSCME has negotiated several benefits unique to the police department employes over the course of several years. AFSCME has processed grievances on behalf of the police department employes, including the arbitration step. Further, the job posting procedure has been used by employes in the police department to transfer into positions located in City Hall.

The removal of dispatchers and complaint clerks from the existing unit would result in undue fragmentation under the statute.

POSITION OF THE CITY

The City takes the position that the dispatchers and complaint clerks should remain in a bargaining unit separate from the law enforcement employes. It argues that the Wisconsin Legislature established dispute resolution procedures for sworn law enforcement officers separate from those for other municipal employes as evidenced by Sec. 111.70(4)(cm)9, Stats. Thus, law enforcement and firefighting personnel should be in separate and distinct bargaining units.

Moreover the Wisconsin Legislature has provided a separate retirement benefit structure for law enforcement personnel and under that system defined a police officer as one whose functions clearly fall within the scope of active law enforcement while excluding those employes whose principal duties are such as a telephone operator, clerk, steno, machinist or mechanic even though such an employe is subject to occasional call to perform duties within the scope of active law enforcement. In regards to disability benefits, the Legislature defines law enforcement officer in Sec. 102.475(8)(c), Stats., as a person employed for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests. Further, under Sec. 967.02(5), Stats; the Legislature defines a law enforcement officer as one vested with the duty to maintain public order or to make arrests for crimes. Clearly the Legislature has recognized law enforcement officers as employes with different interests and responsibilities than those of general municipal employes. Furthermore, it is clear from the statutes that law enforcement officers are those employes who not only are actively employed in law enforcement activities, but also are authorized to make arrests.

The Commission has a long-standing line of decisions which have placed law enforcement personnel with the power of arrest in bargaining units separate from other municipal employes. The Commission has consistently refused to include in units of law enforcement personnel with the power of arrest those municipal employes involved in law enforcement activities but who lack the power of arrest.

There is a long history of the dispatcher and complaint clerk positions being

included in the bargaining unit with the City Hall employees. The complaint clerks and dispatchers have performed duties similar to those performed by other clerical employees in the City Hall unit. Both groups of employees work with typewriters and computer terminals and the only real differences are the type of information dealt with and the work location of the employee. In summary the wages, hours and working conditions of the dispatchers and complaint clerks are much more similar to those of the other employees in the City Hall bargaining unit than they are with the law enforcement employees with the power of arrest.

The City does not believe there is any basis to sever the dispatchers and complaint clerks from the bargaining unit in which they are currently placed.

DISCUSSION

Looking first at the WPPA's motion to consolidate, the Commission is aware that the Marinette County and Marathon County cases present some of the same issues before us herein. However, because of the potential that consolidation would delay issuance of our decisions in some or all of those cases, 4/ we have denied the motion.

Turning to the WPPA's contention that the clerks and dispatchers should constitute a separate bargaining because of a lack of community interest with other employees in the existing city hall unit, we evaluate the WPPA request under the following factors:

1. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
2. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
3. Whether the employees in the unit sought have separate or common supervision with all other employees.
4. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
5. Whether the unit sought will result in undue fragmentation of bargaining units.
6. Bargaining history.

A review of the record reveals that none of the complaint clerks or dispatchers have the power of arrest, and although they wear uniforms while on duty, they do not carry weapons. Their performance of matron, prisoner escort and court appearance duties are of an irregular and very occasional nature. Their rides with the patrol officers have been for the purpose of familiarizing them with such duties rather than to train them in the performance of such duties. It is true that the training of certain employees to perform boat rescue and/or negotiator aide duties are of a specialized nature which other City Hall employees have not received. However, those duties have been performed on only a few occasions and are not the primary duties of those individuals. The dispatchers spend approximately 90 percent of their time in dispatching activities and the receipt of calls, all of which are entered into the computer, while the complaint clerks spend approximately 85-90 percent of their time in typing, receiving calls and general clerical duties. Those activities require skills similar to the skills of other clerical employees in the City Hall unit.

There are some unique differences between the dispatchers and complaint clerks in comparison to the other City Hall employees. The dispatchers may indeed work under more stress in performing their duties than the other City Hall employees, or even the complaint clerks. Both dispatcher and complaint clerks work

4/ We note that the record in the Marinette County case has yet to be completed.

rotating shifts which includes nights, weekends and holidays and wear uniforms while on duty.

Conversely, the supervision of the dispatchers and complaint clerks by police department employes is not unique, since the City Hall employes are also supervised by employes of their respective departments. Similarly, the procedures for hiring and disciplining employes in the City Hall bargaining unit are the same for all departments whose employes are in that bargaining unit. It should be noted that said disciplinary procedure is different than the one for sworn police officers. Also, at least three other bargaining unit employes work in locations other than City Hall. Further, some dispatchers and complaint clerks have utilized the contractual job posting procedure to move to positions in City Hall.

In view of the bargaining history, the similarities of basic skills and working conditions, and the number of employes involved, the Commission finds that the dispatchers and complaint clerks share a sufficient community of interest with other unit employes to continue to be included in the same bargaining unit, and that the differences between said groups of employes are thus insufficient to overcome the statutory mandate against fragmentation of bargaining units. 5/

Turning to the WPPA's request that the clerks and dispatchers be included in the existing police unit, the Commission has long held that only those employes who perform duties related to the law enforcement function and who have the power of arrest will be found to be "law enforcement personnel" properly included in a law enforcement unit governed by Sec. 111.77, Stats. 6/ As we have also indicated in prior cases, that interpretation is supported by the definition of various types of law enforcement personnel found elsewhere in the statutes. 7/

Those employes who possess the power of arrest play a critical role in maintaining the public peace and because of same, the Legislature failed to provide that said employes in their attempt to settle disputes under Sec. 111.77, Stats., have the right to strike. On the other hand, employes in law enforcement departments who do not possess the power of arrest do not play the same critical role in maintaining the public peace. Consequently, the Legislature has provided these employes with a different statutory scheme under which to attempt to settle disputes, and said employes are afforded the right to strike under the limited circumstances set forth in Sec. 111.70(4)(cm), Stats. Because law enforcement personnel and other municipal employes are subject to different statutory provisions regarding their respective rights to strike or to pursue interest arbitration, it is inappropriate to include the civilian employes who do not possess the power of arrest in the same bargaining unit with law enforcement personnel. To combine law enforcement personnel with non-law enforcement personnel would create an untenable situation when implementing the interest arbitration and limited right to strike provisions of Secs. 111.77 and 111.70(4)(cm), Stats.

In summary, the Commission is not persuaded that there is any substantial basis to alter its long-standing policy of relying on the power of arrest as the

5/ The record contains expressions of dissatisfaction by the dispatchers and complaint clerks concerning their perception of the quality of the representation they are receiving from AFSCME. Such perceptions are not a basis for establishing separate units for various job classifications.

6/ Waukesha County, Dec. No. 14830 (WERC, 8/76); Waukesha County, Dec. No. 14534-A (WERC, 11/76); LaCrosse County, Dec. No. 19539 (WERC, 4/82); Vernon County, Dec. No. 21082 (WERC, 10/83); Kenosha County, Dec. No. 21910 (WERC, 8/84).

7/ In addition to the definition in Sec. 165.85(2)(c), Stats., see also Sec. 102.475(8)(c), Stats., which defines a law enforcement officer for purpose of death benefits; and Sec. 967.02(5), Stats., which defines a law enforcement officer in the criminal procedure code; and Sec. 40.02(48)(b)(1) and (3), Stats., which define a police officer and deputy sheriff for purpose of retirement benefits.

determinative factor in establishing the composition of law enforcement bargaining units. We further note that the Legislature has amended the Municipal Employment Relations Act several times during years we have been applying this policy and has not seen fit to modify the law in a manner which would produce a different result. Furthermore, if we were to adopt the WPPA position, the department employees who do not possess the power of arrest would be deprived of the limited right to strike they have been statutorily granted. Thus, we will not include the dispatchers and complaint clerks, who do not possess the power of arrest, with the sworn police officers. Given the foregoing, we have dismissed WPPA's petition which sought to establish a bargaining unit of complaint clerks and dispatchers separate from the bargaining unit of other City Hall employees in which those positions now reside or, in the alternative, to add said clerks and dispatchers to the law enforcement unit.

Dated at Madison, Wisconsin this 27th day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner