

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANE COUNTY

Case 66
No. 38432 ME-160
Decision No. 17278-A

DANE COUNTY

Case 113
No. 38508 ME-2684
Decision No. 25002

Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Mr. Steve Dettinger,
20 North Carroll Street, Madison, Wisconsin 53703, appearing on behalf
of the Wisconsin Professional Police Association/LEER Division.

Mr. Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, Inc., 2825 North Mayfair Road, Wauwatosa, Wisconsin 53222, appearing on behalf of The Labor Association of Wisconsin.

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of Joint Council of Unions, AFSCME, AFL-CIO.

Ms. Kristi A. Gullen, Deputy Corporation Counsel, Dane County, 119 Martin Luther King Jr. Blvd., Madison, Wisconsin 53709, appearing on behalf of Dane County.

FINDINGS OF FACT,
CONCLUSION OF LAW AND
ORDER CLARIFYING BARGAINING UNIT
AND DISMISSING PETITION FOR ELECTION

Dane County having on February 20, 1987, filed a unit clarification petition requesting the Wisconsin Employment Relations Commission to determine the appropriate bargaining unit placement of 13 current County communicator positions and 25 City of Madison dispatcher positions which will comprise a group of County employees called "communicators" in a new Consolidated Dispatch Department; and the Wisconsin Professional Police Association/LEER Division having, on March 13, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all dispatchers or communicators or data control operators employed by the County in the new Consolidated Dispatch Department, excluding supervisory, managerial and confidential employees, to determine whether said employees desire to be represented by WPPA/LEER Division; and both of the above petitions having been consolidated for purposes of hearing and decision; and a hearing in the matter having been conducted on May 29 and July 27, 1987, in Madison, Wisconsin, before Examiner Lionel L. Crowley, a member of the Commission's staff, during which Wisconsin Council 40, AFSCME, intervened as the current collective bargaining representative of certain County employees; and the Labor Association of Wisconsin (LAW) having also been permitted to intervene in the proceedings based upon LAW's interest in representing the communicators in a separate bargaining unit; and the parties having submitted post-hearing briefs, which were received on or before September 29, 1987; and the Commission, being fully advised in the premises, makes and issues the following

No. 17278-A
No. 25002

FINDINGS OF FACT

1. That Dane County, referred to herein as the County, is a municipal employer and its offices are located at 119 Martin Luther King Jr. Blvd., Madison, Wisconsin 53709.

2. That Wisconsin Professional Police Association/LEER Division, referred to herein as WPPA, is a labor organization and its offices are located at 7 North Pinckney Street, Madison, Wisconsin 53703.

3. That Wisconsin Council 40, AFSCME, referred to herein as AFSCME, is a labor organization and its offices are located at 5 Odana Court, Madison, Wisconsin 53719.

4. That the Labor Association of Wisconsin, referred to herein as LAW, is a labor organization and its offices are located at 2825 North Mayfair Road, Wauwatosa, Wisconsin 53222.

5. That the County and the City of Madison jointly decided to consolidate all of their dispatching of emergency services into a "911" service, which will combine the dispatching for fire, police, sheriff, and emergency medical services for the entire County; that the new 911 service is planned to go into operation on or after January 1, 1988, and will comprise a newly-created Consolidated Dispatch Department operated by the County; that the new Department will eventually be staffed with approximately 45 non-supervisory employees who will not have the power of arrest; that the County employees who will dispatch emergency services in the new Department will be called "communicators"; and that it is planned that present personnel from the County and the City of Madison will staff the Department.

6. That the current dispatching duties for the County are being performed by County employees who are represented by WPPA in a deputies unit as these dispatchers currently have the power of arrest; that the dispatching duties for the City police and fire departments are currently being performed by City employees who do not have the power of arrest and are represented by AFSCME; that according to the consolidation planning, the current County dispatchers will be transferred into the new Department; that City dispatchers will be given the option of transferring into the new Department or remaining in the employ of the City by exercising certain contractual bumping rights into different positions; and that all but one of the current dispatchers for both the County and the City have signed petitions stating that they wish to be organized into a separate bargaining unit.

7. That the communicators in the new Department will be assigned the following duties: receive calls from the general public, evaluate calls as to urgency and location, send information to the appropriate public safety response unit, monitor and direct the location of public safety personnel, coordinate public safety communications, especially in emergency situations, operate varied and complex police telecommunications equipment and computer equipment, maintain extensive logs and records of all dispatches received and transmitted, provide information and assistance to public safety personnel, and various other public safety related activities.

8. That the communicators are expected to have the following skills and abilities: to speak clearly and to be understood, to be able to make split-second decisions, to be able to handle a number of functions and calls at the same time and decide which calls have top priority, to be able to handle a great deal of stress and cope with life and death situations, to have good eye-hand coordination, to be able to work well with electronic equipment, to understand the procedures of police, fire, sheriff and emergency medical services' departments, as well as the meaning of legal papers that may be served upon the public, such as subpoenas.

9. That the communicators will receive extensive training in order to properly operate the electronic equipment and to follow public safety procedures; that the communicators will receive initial training as well as ongoing training and education, such as taking seminars, while continuing in the job; that the communicators will staff the Department 365 days a year, 24 hours a day; that the

communicators will work 37 1/2 hours a week with a paid lunch hour; that the communicators will be assigned to cover all three shifts and will likely work on a schedule that will provide for six days on and three days off; that the communicators initially will be paid according to their present rates of pay; and that the communicators will work in an area on the first floor of the City County Building, which will be secured with devices to prevent public access, and which will have its own locker room, wash rooms, and lunch room.

10. That there is a policy-making board to oversee the operation of the new Department, which is called the Public Safety Communications Board, and which is made up of the Dane County Sheriff, the City of Madison Police and Fire Chiefs, a member of the Dane County Board of Supervisors, a member of the City of Madison Common Council, and a representative of Emergency Medical Services; that this Board has a technical advisory committee to advise it about specific technical needs; that the County Executive is the ultimate person in authority in the chain of command, with a Public Safety Communications Manager heading the Department who will report to the County Executive; that there will be a lead communicator on each shift; and that law enforcement supervisors may also direct the communicators during emergencies or when dealing with specific law enforcement issues.

11. That the County filed the instant unit clarification petition seeking to identify the appropriate bargaining unit in which the group of communicators who will staff the new Consolidated Dispatch Department should be included but the County indicated that it is a neutral participant in the proceedings; that AFSCME contends that the positions of communicators should be accreted to the bargaining unit represented by the Joint Council of Unions, AFSCME; and that both the WPPA and LAW contend that the Commission should find that the communicator positions in the new Department constitute a separate appropriate bargaining unit and that an election should be held to determine which labor organization, if any, should be the bargaining representative.

12. That AFSCME and its affiliated Joint Council of Unions, referred to herein as JCU, has been the collective bargaining representative of certain County employees for the past 20 years; that the JCU contains two locals--Local 705 which covers Hospital and Home employees and Local 720 which covers Courthouse employees and related departments; that the bargaining agreement currently in effect between the County and the JCU contains the following recognition clause:

The Employer recognizes the Union as the exclusive bargaining representative for all employees as hereinafter defined except the following: Supervisory employees; law enforcement employees of the Sheriff's Department; non-clerical employees of the Highway, Exposition Center and Airport Departments; confidential employees; professional employees as defined by Wisconsin Statutes 111.70 and craft employees so certified by the Wisconsin Employment Relations Commission, for the purposes of conferences and negotiations with the Employer, or its authorized representative on question of wages, hours and other conditions of employment;

that although the positions of communicators were not in existence at the time that the JCU was voluntarily recognized, the unit description is broad based and covers all County positions except those specifically excluded; that the positions of communicators do not fall into the exclusions named above; and that in the past when the County created new departments to operate the Airport and the Zoo, clerical and technical employees were accreted by the County to the JCU unit.

13. That there are approximately 643 full-time equivalent employees represented by the JCU; that the training, skills, duties, hours, wages, working conditions, work locations, and supervision of those employees vary greatly; that the County has training programs for several types of employees; that most of the employees represented by the JCU work Monday through Friday on day-time schedules but that a number of employees in different departments work three shifts with a varied work week; that all of the full-time employees represented by the JCU work a 40 hour week and some of them have paid lunch periods; that employees represented by the JCU work in several different locations in the County, and that some County departments such as Social Services and the Detention Center are secured

facilities with limited public access; that the JCU considers employees' levels of stress in its bargaining negotiations and in making proposals for reclassifications of employees or rates of pay; that the various County department managers report directly to the County Executive; that most departments have policy-making boards, committees or commissions attached to them and that some of the boards and commissions contain a combination of elected officials from the City of Madison and Dane County; that all County employees are covered by the County Civil Service Ordinances; that the group of communicators in the newly-formed Consolidated Dispatch Department share a community of interest with the employees represented by the JCU; that a separate unit of communicators would unduly fragment bargaining units within the municipal workforce; and that inclusion of the communicators in the JCU unit does not raise a question of representation in said unit.

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

CONCLUSION OF LAW

1. That a separate bargaining unit consisting only of the communicators employed by Dane County 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 purpose of collective bargaining.

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

ORDER CLARIFYING BARGAINING UNIT
AND DISMISSING PETITION FOR ELECTION 1/

1. That the bargaining unit of County employees represented by the Joint Council of Unions, AFSCME, as described above in Finding of Fact 12, is hereby clarified by including within that unit the positions of communicators in the Consolidated Dispatch Department.

2. That the petition for representation election filed by WPPA/LEER is hereby dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 25th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner
Danae Davis Gordon
Danae Davis Gordon, Commissioner

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,

(Footnote 1/ continued on page 5).

1/ Continued

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 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.

DANE COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT AND DISMISSING PETITION FOR ELECTION

BACKGROUND

Dane County and the City of Madison are consolidating all of their dispatching of police, sheriff, fire, and emergency medical services for the entire County into a "911" service, and have created the Consolidated Dispatch Department, which is projected to go into operation on or after January 1, 1988. Dispatchers from the County and the City are expected to be transferred into the new department, and they will be called "communicators." Since the current dispatchers for the County are represented by the WPPA and the current dispatchers for the City are represented by AFSCME, the issue arose as to the proper representation for the new group of communicators. The County filed a petition to identify the appropriate bargaining unit for the communicators, and WPPA petitioned for an election involving the communicators in the new Consolidated Dispatch Department. The petitions were consolidated for a hearing and for a decision.

THE PARTIES' POSITIONS

The County's Position

Although the County filed a petition seeking to clarify the bargaining unit, it takes no position and remains a neutral party in the proceedings.

AFSCME's Position

AFSCME argues that the communicators should be unconditionally accreted into the bargaining unit represented by AFSCME Joint Council of Unions (also called JCU herein). In the alternative, AFSCME takes the position that the communicators should be given a chance to vote for accretion into the AFSCME unit, but only the AFSCME unit. Finally, if the Commission should find a separate bargaining unit appropriate and order an election, AFSCME desires to be included on any ballot.

AFSCME notes that the JCU represents a single unit of all employees except for supervisory, confidential, professional, craft employees, and law enforcement employees, and the non-clerical employees of the Highway, Exposition Center and Airport Departments. This is a broad based unit covering all County positions except those specifically excluded, and AFSCME contends that the newly created positions fall within its jurisdiction. It is not seeking to expand its scope of representation, and even if the Commission were to find that the accretion would be an expansion of the JCU unit, the positions still fall within the JCU unit description.

According to AFSCME, the communicators will share a community of interest with other County employees. Although it is not yet known whether dispatchers for the City will choose to transfer into the new Department, AFSCME currently represents those employees in a separate unit and has represented their interests in collective bargaining. Although acknowledging that the levels of skill and specialization vary with different positions, AFSCME argues that the JCU represents many positions which require the skills and duties that will be required of the communicators. The JCU represents many employees who work a varied work week covering different shifts. AFSCME notes that although both WPPA and LAW made many arguments in the hearing about the levels of stress to which communicators are subjected, there are many high pressure jobs held by County employees who are represented by AFSCME, and AFSCME has often taken stress into account in bargaining for employees. While the communicators will receive extensive training, AFSCME notes that the County provides training for many or all of its employees. Additionally, the JCU represents employees who work in many locations throughout the County. The pattern of supervision planned for the new Department is common throughout other County departments. Finally, AFSCME argues that the creation of a separate bargaining unit for the communicators would result in undue fragmentation.

WPPA's and LAW's Position

While WPPA and LAW filed separate briefs, their positions are similar. Both WPPA and LAW agree that a separate bargaining unit would be appropriate for the communicators. Both unions argue that the communicators do not share a community of interest with other County employees, and that the unique interests of the communicators would be subordinated to the interests of the larger JCU bargaining unit if accreted into it.

WPPA and LAW argue that the duties and skills required of the communicators are wholly different from the duties and skills required of other County employees represented by AFSCME. They note that the communicators are to receive a great deal of training in computer and electronic equipment, as well as the procedures of emergency and public safety departments. Further, they argue, the communicators deal with life-threatening issues on a moment-by-moment basis, unlike other County employees. Therefore, the levels of stress experienced by the communicators are much greater than anything felt by other County employees represented by AFSCME.

Additionally, WPPA and LAW argue that the communicators' working conditions are substantially different than the working conditions of other County employees. The communicators will work a six-day on and three-day off schedule, and staff the Department 24 hours a day, 365 days a year. The majority of other AFSCME members work a normal 40 hour, Monday through Friday, work week. The communicators will work 37 1/2 hours with a paid lunch period. WPPA and LAW point out that the communicators in the 911 system will have a workplace that is isolated from other County employees, with its own locker room, wash rooms and break area.

WPPA in particular notes that there is no bargaining history with respect to the communicators, although there has been bargaining history as it relates to each group of those who are expected to be transferred. Moreover, WPPA contends that if the communicators were accreted to the AFSCME unit, they would be deprived of the opportunity for meaningful negotiations over the relevant provisions of the collective bargaining agreement.

Both WPPA and LAW argue that to create a separate unit would not result in undue fragmentation, due to the relatively large number of communicators (approximately 45) who have unique interests which should not be subordinated to the interests of a larger group.

Finally, WPPA and LAW urge the Commission to consider the desires of the employees in this case, since the employees who are likely to be transferred into the new department have signed petitions stating that they wish to be organized into a separate and distinct bargaining unit. WPPA and LAW argue that where the County has not opposed the separate unit of communicators and the employees concerned want a separate unit, the anti-fragmentation problems have been addressed.

DISCUSSION

The threshold question in this case is whether the communicator positions fall within the JCU unit description. A review of the JCU unit description indicates that the communicators fit within the broad inclusive language and are not within the specific exclusions in the unit description. Thus, the positions in question are included in the JCU unit unless there is some basis for "carving out" these positions from the "wall-to-wall" unit JCU represents.

WPPA and LAW argue that the communicators would constitute a viable and appropriate separate unit because of the relatively large number of employees in communicator positions and the communicators' "unique" community of interest. We do not find these arguments to be a persuasive basis for "carving out" the communicators from the JCU unit. While the record demonstrates that the communicators will have certain distinctive working conditions, obviously the same can be said for many employees that fall within the existing "wall-to-wall" unit. The statutory mandate to avoid fragmentation of bargaining units presumes the legitimacy of including within the same unit various employees with differing working conditions. That same statutory mandate would be compromised if we were

to establish an additional unit herein. To the extent LAW and WPPA argue that the anti-fragmentation argument is inapplicable because the County is neutral herein, we note that the Legislature has directed us to avoid fragmentation and adherence to this mandate is not conditioned upon the consent of the employer. 2/

Given the foregoing, we conclude that the statutory mandate to avoid fragmentation renders it inappropriate to "carve out" a unit of communicators from a "wall-to-wall" unit within which they are appropriately placed. As we have routinely noted in prior clarification proceedings, the extent to which any existing JCU/County contract applies to the communicators is subject to collective bargaining. 3/

Dated at Madison, Wisconsin this 25th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

2/ Madison Metropolitan School District, Dec. No. 21200 (WERC, 11/83).

3/ Chetek School District, Dec. No. 19206 (WERC, 12/81); Minoqua Jt. School District, Dec. No. 19381 (WERC, 2/82).