

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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WISCONSIN PROFESSIONAL POLICE :
  
ASSOCIATION/LAW ENFORCEMENT EMPLOYEE : Case 2
  
RELATIONS DIVISION : No. 41257 ME-2831
  
: Decision No. 26151
  
Involving Certain Employes of :
  
:
  
CITY OF PHILLIPS (POLICE DEPARTMENT) :
  
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Appearances:

Mr. Gordon E. McQuillen, Esq., of Cullen, Weston, Pines & Bach, 20 North Carroll Street, Madison, Wisconsin 53707 appearing on behalf of the Petitioner.

Mr. Stephen D. Willett, Esq., City Attorney, 180 North Lake Avenue, P.O. Box 89, Phillips, Wisconsin 54555 appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (hereafter WPPA) having on November 8, 1988 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among law enforcement personnel in the employ of the City of Phillips to determine whether said employes desire to be represented by the WPPA for purposes of collective bargaining; and hearing in the matter having been conducted on March 28, 1989 at Phillips, Wisconsin, before Sharon Gallagher Dobish, a member of the Commission's staff; and post hearing briefs having been received by July 12, 1989; 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, hereafter referred to as the WPPA, is a labor organization with offices located at 7 North Pinckney Street, #220, Madison, Wisconsin 53703.

2. That the City of Phillips, hereafter referred to as the City, is a municipal employer with offices located at 188 North Lake Avenue, P.O. Box 89, Phillips, Wisconsin 54555; and that among its governmental functions, the City maintains a Police Department wherein, in addition to the Chief of Police who works a full-time police officer's schedule, the City employs three full-time and seven part-time police officers.

3. That, in the petition initiating the instant proceeding, the WPPA seeks an election to determine whether the employes in the following alleged appropriate unit desire to be represented for the purposes of collective bargaining:

All regular full-time and regular part-time employees of the Phillips Police Department excluding supervisory, confidential and managerial personnel.

4. That the parties stipulated that the sole issue before the Commission is the unit status of the seven part-time police officers; that the WPPA contends that these seven officers are regular part-time employes and that they should be included in the bargaining unit, while the City contends that the seven part-time officers are temporary or casual employes, do not share a

community of interest with the full-time officers, and therefore should not be included in a bargaining unit of full-time officers.

5. That the Chief of Police, Craig A. Moore, occupies the sole supervisory position in the City's Police Department and there is no dispute between the parties that his position, and Chief Moore as its incumbent, should be excluded from any appropriate bargaining unit.

6. That for the past several years, the City's Police Chief has maintained a list of individuals who have been found eligible for part-time employment on the Police Department; that at the time of Chief Moore's hire as Chief of Police in June of 1987, two of the part-time officers at issue herein, Earl Denny and Keith Johnson were on this eligibility list; that after Chief Moore began his employment, he expanded this eligibility list which presently includes the following additional part-time officers at issue herein: Dudley Whitcomb, Robert Randolph, Todd Hintz, Allen Lobermeier and Richard Heitkemper; that there are two other officers, Hill and Valiga, who have been employed by the Department in the past year but who are no longer on the Chief's part-time work eligibility list; that officer Valiga was initially hired by the City as a full-time police officer, he thereafter went to part-time status and he returned to full-time status in July, 1989; and it is agreed by the parties that he is eligible to vote herein; that Hill's name no longer appears on the Chief's part-time work eligibility list and the parties stipulated that Hill will not be called to work by the City and that his status is not in issue here; that Robert Randolph was formally hired by Chief Moore in or about September, 1988 to act as a part-time officer; that Randolph was not a certified police officer at the time of his hire but that the City paid his salary, benefits and tuition while he attended school during the months of September through November, 1988; that shortly after receiving his certification, Randolph took a position as a full-time deputy sheriff for Price County; that Randolph was the only part-time officer who went through a complete hiring process; that all part-time officers, with the exception of Randolph, have been certified police officers prior to their being placed on the Chief's part-time work eligibility list; that all of the seven officers whose names currently appear on the Chief's part-time work eligibility list have a reasonable expectation of continued employment as a part-time officer.

7. That the City employs the Chief and three full-time officers on a six days on and two days off schedule to cover its shifts: Chief Moore regularly works the 7 a.m. to 3 p.m. shift, Dosch works the 3 p.m. to 11 p.m. shift, Valiga works the 11 p.m. to 7 a.m. shift and Crepinsek works two days of each of the three shifts with two days off; that unlike the City's part-time officers, full-time officers receive full benefits--vacation, holidays, sick leave, Unemployment and Workers Compensation, health insurance, SSI and WRS pensions, and the choice of taking compensatory time or overtime pay; that part-time officers are eligible for WRS, have Workers Compensation coverage, Social Security and tax withholding from their pay checks and receive overtime pay for each hour worked after 40 hours in a week; that full-time officers receive an annual budgeted salary based upon 2190 hours of paid time while part-time officers are paid an hourly rate of between \$7.01 and \$7.50 per hour; that the 2,190 hour figure includes all paid time off for full-time officers; that all officers are paid every two weeks; that Chief Moore prepares the payroll for part-time officers, but the Chief does not prepare the payroll for full-time officers; that there is no difference between the duties and responsibilities of the full-time and part-time officers; that part-time officers receive a badge from the City and their clothing allowance is prorated depending upon the number of shifts they work, as follows:

6 shift worked -- \$50 clothing allowance  
12 shifts worked -- \$100 clothing allowance  
18 shifts worked -- \$150 clothing allowance

that full-time officers receive a \$300 annual clothing allowance; that no part-time officers have been evaluated in writing during Chief Moore's tenure; that full-time officers receive written annual evaluations which are placed in their personnel files; that Chief Moore keeps personnel files on all full-time and part-time officers; that it is departmental policy to give part-time officers an absolute preference for any full-time opening and, if a full-time opening occurred, the City would not post the job or advertise the job outside of the Department, but, rather, the Chief would hire one of the part-time officers.

8. That there were 2772 hours which were worked by part-time officers from the pay period ending March 31, 1988 through the pay period ending March 15, 1989; that, in general, there are approximately 2500 hours of work performed by part-time officers per year; that, at a minimum, one part-time officer normally works in each pay period; that the Chief makes out monthly work schedules for each quarter which list hours for all full-time officers and list hours for part-time officers under the heading "extra hire;" that as of March 28, 1989 Chief Moore anticipated using part-time officers as follows during the months listed:

April: 8 shifts     -- 4 assigned to Hintz  
                           -- 4 assigned to Lobermeier  
May:    0 shifts

June: 11 shifts -- 7 assigned to Hintz  
-- 4 assigned to Lobermeier

that during the month of May, 1989, the Chief expected that he would have to call upon part-time officers to work several shifts since full-time officers would likely request or require time off from work in May; that during the month of March, 1989 at least one part-time officer worked 26 of the 31 work days of that month and, on five days of that month, two part-time officers worked shifts; that, in addition, whenever a full-time officer is unavailable for work due to leave or vacation, Chief Moore generally uses part-time officers to work their shift; that when deciding which part-time officer will be offered work, Moore considers which officers might be available as well as which officers have been offered work recently; that the Chief then calls upon the officers he has selected and offers them the part-time hours until all hours are covered or until all part-time officers have refused the available part-time work; that part-time officers are free to refuse work offered by Chief Moore and, when no part-time officers are available to work extra hours, the Chief either denies the full-time officer's request for leave or the Chief arranges for another full-time officer (or himself) to work overtime, if that is necessary; that although there are other individuals who are currently certified and working in the area as police officers for other police agencies, their names do not appear on Chief Moore's part-time work eligibility list either because the Chief does not know them or their work or because the Chief has knowledge that their work would not be satisfactory to the City; that Chief Moore is free to expand or contract the part-time work eligibility list as he sees fit; that, in fact, in August, 1988, Chief Moore made the decision to cease using one part-time officer (who is not in issue here) because of poor work performance; that Chief Moore could not staff his Department at the level the City expects without using part-time officers unless he were authorized to hire more full-time officers.

9. That all of the City's part-time patrolmen are employed elsewhere in full-time and/or part-time jobs; that Keith Johnson, Robert Randolph and Todd Hintz are employed as full-time deputy sheriffs by the Price County Sheriff's Department; that Earl Denny is employed full-time by a private sector employer, Multi-Tech; that Lobermeier and Johnson are also employed part-time as patrolmen for the City of Park Falls; that Hintz is also employed part-time by the State of Wisconsin as a special warden; that Lobermeier is also employed as a part-time deputy sheriff by the Price County Sheriff's Department; and that those who are employed full or part-time with Price County may not refuse a call to work for Price County in an emergency situation.

10. That Earl Denny has worked for the City as a part-time officer since 1984; that Denny was hired as a part-time officer by Chief Moore's predecessor, Chief Gould; that in the following years, Denny worked the following hours for the City:

1984--254 hours  
1985--698 hours  
1986--724 hours  
1987--163 hours  
1988--139 hours

that between July 15 and December 15, 1988, 1/ Denny did not work for the City; that Denny worked 16 hours for the City during the pay period ending December 31, 1988, but has not worked during 1989; that on at least two occasions during 1989 prior to the instant March 28, 1989 hearing, Denny was offered part-time work, but declined since he was then on probation at Multi-Tech and the offered part-time work fell during Denny's normal work hours for Multi-Tech; and that Denny will not accept part-time work for the City while he continues to be on probation at Multi-Tech unless the work fell outside his normal schedule at Multi-Tech.

11. That Keith Johnson has been employed as a part-time officer by the City since December of 1986 (prior to Chief Moore's hire); that Johnson worked during eight of the 24 two week pay periods preceding the hearing accumulating 70 hours of work; that he worked only three of the 15 pay periods preceding the hearing; that most recently, Chief Moore offered Johnson part-time hours on March 28, 1989 (the date of the instant hearing) but Johnson declined the work; and that in early 1989 on three other occasions, Johnson also declined to work part-time hours offered to him by the Chief.

12. That Lobermeier worked from 8.6 to 88 hours per pay period in each of the 24 two week periods from March 31, 1988 through March 15, 1989, with the exception of the pay period ending September 30, 1988 when he worked no hours for the City.

13. That since Hintz started work as a part-time officer for the City in May 1988, he has worked from six hours to 72 hours during 14 of the 20 pay periods preceding the hearing.

14. That Heitkemper worked a total of 57.5 hours for the City during six of the 11 pay periods from October 15, 1988 through March 15, 1989.

15. That Whitcomb worked 57.5 hours during the six pay periods from March 31, 1988 to June 30, 1988; and that since June 30, 1988, he has worked a total of 34 hours during three pay periods: August 31, 1988 (18 hours), December 31, 1988 (eight hours) and March 31, 1989 (eight hours).

16. That between the completion of his training in November 1988 and March 15, 1989, Randolph worked a total of 24 hours during three pay periods: December 15, 1988 (eight hours); February 15, 1989 (eight hours) and February 28, 1989 (eight hours).

17. That Lobermeier and Hintz work a sufficient number of hours on a regular basis to warrant their being found to be regular part-time employes of the City.

18. That Denny, Whitcomb, Randolph, Johnson and Heitkemper do not work a sufficient number of hours on a regular basis to warrant their being found to be regular part-time employes of the City.

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

#### CONCLUSIONS OF LAW

1. That a bargaining unit consisting of all regular full-time and regular part-time employes of the City of Phillips Police Department who possess the power of arrest excluding supervisory, confidential and managerial employes is appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That a question of representation, within the meaning of Sec. 111.70(4)(d)3, Stats. presently exists among employes of the City of Phillips, in the petitioned-for collective bargaining unit described in Conclusion of Law 1.

3. That officers Lobermeier and Hintz are regular part-time employes of the City and therefore are appropriately included in the petitioned-for collective bargaining unit described in Conclusion of Law 1.

4. That officers Denny, Whitcomb, Randolph, Johnson and Heitkemper are not regular part-time employes but are casual employes of the City and therefore are excluded from the petitioned-for collective bargaining unit described in Conclusion of Law 1.

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

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1/ A document marked Employer Exhibit #1 was utilized by the parties at hearing but was not offered in evidence. The document is a compilation of the work hours of officers during the two week pay periods ending March 31, 1988 through March 15, 1989. We have admitted the document into the record on our own motion as we are persuaded that it is the most accurate information on employe hours presented or relied upon by the parties at hearing.

DIRECTION OF ELECTION

That an election by secret ballot 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 employes of the City of Phillips Police Department who possess the power of arrest excluding supervisory, confidential and managerial employes who were employed by the City of Phillips on September 8, 1989, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes voting desire to be represented by the Wisconsin Professional Police Association, Law Enforcement Relations Division, for the purpose of collective bargaining with the City of Phillips, on wages, hours and conditions of employment or not to be represented.

Given under our hands and seal at the City of  
Madison, Wisconsin this 8th day of September,  
1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

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

The City

The City argues that the substitute police officers in question are temporary and/or casual employes who lack "municipal employe" status under Sec. 111.70(1)(i), Stats. and thus are not appropriately included in a bargaining unit of regular full-time and regular part-time employes. The City contends that as the officers work only on an "as-needed" basis and have an absolute right to reject any work, they do not possess the requisite reasonable expectation of continued or regular employment to qualify as regular part-time employes. The City alleges that much of the information presented by the Union regarding the number of hours actually worked by substitute officers is unreliable and should be rejected by the Commission. Even if the Commission accepts the Union's assertions as to hours worked, the City argues that only one of the substitute officers would qualify as regular part-time.

The City further asserts that the existing wages and conditions of employment of the substitute officers differ substantially from those of the regular full-time officer and thus that there is no community of interest between the two groups of employes.

Given the foregoing, the City urges the Commission to exclude the substitute officers from the unit which the Union seeks to represent.

The Union

The Union asserts that the officers in question are regular part-time employes who should appropriately be included in a bargaining unit with regular full-time officers. The Union argues that as work is regularly available to and performed by the part-time officers, their individual ability to refuse work does not make them "casual" employes. The Union further contends that the officers have reasonable expectation of continued employment by the City and thus are not "temporary" employes.

The Union alleges that as the part-time officers share common duties, training, working conditions, supervision, and work location with full-time officers, they possess sufficient community of interest to warrant inclusion in the same unit as full-time officers. The Union also argues that establishment of a separate "part-time" unit would constitute undue fragmentation.

Given the foregoing and consistent with the existing Commission precedent, the Union asks that the part-time employes be included in the bargaining unit it seeks to represent.

DISCUSSION

The issue before us is whether the part-time sworn employes of the City of Phillips Police Department are casual or temporary employes 2/ who would be excluded from the "regular full-time and regular part-time" unit sought by the

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2/ Contrary to the City's arguments, casual and temporary employes are "municipal employes" within the meaning of Sec. 111.70(1)(i), Stats. and thus have the right to be represented for the purpose of collective bargaining. Stevens Point Schools, Dec. No. 7713-A (WERC, 8/89); City of Appleton, Dec. No. 16090-A (WERC, 9/78); Wauwatosa VTAE; Dec. No. 8158 (WERC, 8/67). However, the irregular or temporary nature of their employment typically generates interests which are at odds with those of regular employes and thus casual or temporary employes are generally excluded from "regular" units.

Union or whether said employes are regular part-time employes with sufficient community of interest to be included in the unit. 3/

Initially, we conclude that none of the seven disputed employes are temporary employes. All of these employes have a reasonable expectation of being offered future work by the City.

As to the question of whether the employes are casual, the City currently notes that all of these employes have the right to reject work opportunities. However, it is clear that the City has regular work available for part-timers.

During the year preceding the hearing in this case, at least one part-time officer worked during each pay period. Approximately 2500 hours may be worked by all part-time employes in a given year, with some hours being available and assigned in advance as part of the regular monthly work schedule and the rest being performed to fill-in for full-time officers who are sick, on vacation, etc. Where a regular amount of work is available for part-time employes, individuals who perform something more than a de minimus amount of that work on a regular basis will be found to be regular part-time employes despite their ability to reject work. 4/ Thus, we turn to a determination of whether the work record of any of the seven part-time officers meets this test.

The facts of this case clearly support a conclusion that both Hintz and Lobermeier have worked and will continue to work a significant number of hours with sufficient regularity to be regular part-time employes. Therefore, we conclude that Lobermeier and Hintz are regular part-time employes and are included in the bargaining unit.

In addition, the facts also clearly show that Denny has worked irregularly and sporadically for the City during the past year and that he has not worked for the City since at least January 5, 1989. Thus, we conclude that Denny is a casual employe who is not included in the unit.

With regard to Whitcomb, although he worked more than 600 hours between March 31, 1988 and March 15, 1989, his employment was only regular until July 1, 1988. Thereafter, Whitcomb only worked a total of 34 hours in three pay periods during an eight month period. Thus, we conclude that Whitcomb does not work with sufficient regularity to justify his inclusion in the unit as a regular part-time employe.

With regard to Heitkemper, he worked only 57.5 hours during six of the 11 two-week pay periods occurring from October 15, 1988 through March 15, 1989. In our view, Heitkemper is a casual employe because his part-time work is not sufficiently regular to warrant his inclusion in the bargaining unit as a regular part-time employe.

With regard to Johnson, he worked an average of approximately 10 hours during 11 of the 24 pay periods preceding the hearing. However, as we note that Johnson has only worked during three of the 15 pay periods immediately preceding the hearing, we are persuaded that his share of the available work is not presently sufficiently regular to warrant inclusion in the unit.

Lastly, as to Randolph, the record reflects that since he completed his training in November 1988, he worked eight hours during one pay period in December, no hours in January, 16 hours during the two pay periods in February, and no hours during the one March pay period which had been completed prior to hearing. Randolph was not scheduled to work any of the shifts regularly

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3/ To the extent that the City argues even regular part-time employes lack a sufficient community of interest to be included in a unit with full-time employes, the record clearly establishes that inclusion of the regular part-time employes is appropriate. City of Onalaska, Dec. No. 19226 (WERC, 12/81). All employes share common workplace, supervision, duties, training, skills, and purpose and it would constitute undue fragmentation if we were to establish a separate regular part-time unit. Mid-State VTAE, Dec. No. 14526-A (WERC, 5/85).

4/ Village of Niagra, Dec. No. 12446-A (WERC, 5/79); Village of Mount Horeb, Dec. No. 19188 (WERC, 12/81); City of Milton, Dec. No. 13442-A (WERC, 6/83); Ozaukee County, Dec. No. 22667 (WERC, 5/85).

available to part-timers in April, May or June. On balance, we conclude that the irregularity of Randolph's work and the small number of hours worked combine to make him a casual employe.

Given the foregoing, we have directed an election in a unit consisting of three regular full-time and two regular part-time officers.

Dated at Madison, Wisconsin this 8th day of September, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Commissioner

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner