

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petitions of :
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 WISCONSIN PROFESSIONAL POLICE : Case 1
 : No. 44312 ME-3029
 ASSOCIATION/LAW ENFORCEMENT EMPLOYEE : Decision No. 26744
 :
 RELATIONS DIVISION :
 :
 : Case 2
 Involving Certain Employes of : No. 44460 ME-3040
 : Decision No. 26745
 VILLAGE OF POYNETTE :
 :
 :

Appearances:

Cullen, Weston, Pines and Bach, Attorneys at Law, by Mr. Richard Thal,
 behalf of the Association.
 Lathrop & Clark, Attorneys at Law, by Mr. Ronald J. Kotnik, 122 West
 of the Village.

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

Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, on July 13, 1990, and August 24, 1990 filed petitions requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to the Municipal Employment Relations Act among certain employes in the employ of the Village of Poynette to determine whether said employes desired to be represented for purposes of collective bargaining by said labor organization. Hearing in the matter was conducted before Examiner Jane B. Buffett, a member of the Commission's staff, in Poynette, Wisconsin on November 14, 1990. A transcript was prepared and delivered November 26, 1990. The parties declined opportunity to submit briefs. The Commission, having considered the record and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter the Association, is a labor organization representing municipal employes for purposes of collective bargaining, and has its offices at 7 North Pinckney Street, Madison, Wisconsin 53703.

2. The Village of Poynette, hereinafter the Village, is a municipal employer, and has its principal offices at 106 South Main Street, Poynette, Wisconsin 53955.

3. The Association initiated the instant proceeding by filing petitions requesting the Wisconsin Employment Relations Commission to conduct an election among employes in the Village Police Department, (Case 1) and a second election among employes in the Village Police Department who do not have the power of arrest (Case 2).

4. At the November 14, 1990 hearing, the Association withdrew its petition in Case 2 regarding the employes who do not have the power of arrest.

5. At the hearing, the parties stipulated that the appropriate unit should be:

All regular full-time and regular part-time employes of the Village of Poynette Police Department, excluding managerial, supervisory and confidential employes.

6. The Village employs two full-time police officers and two officers who work less than full-time: Corey Johnson, and Patrick Brown. The Village asserts that Johnson and Brown are casual employes and thus not included in the unit. Police Chief David Johnson includes Johnson and Brown on the monthly work schedules he prepares. Johnson and Brown are regularly assigned to work weekend shifts that are not covered by the two full-time employes. They also work when the need arises on short notice. Both officers have worked for at least one shift in each two-week pay period since first being hired by the

Village. Johnson was hired in February, 1990 and Brown in August, 1990. From May to November, 1990, when one of the two full-time positions were vacant, these officers averaged 45 hours a pay period. Since the vacancy was filled, the need for part-time officers has been reduced, but the Village continues to need the part-time officers on the weekends. The Village Board has directed Chief Johnson not to employ Officer Brown for more than 599 hours during 1991, but it has not restricted his discretion to distribute those hours throughout the year. Chief Johnson can continue to schedule Brown for some hours in each pay period. Johnson and Brown are always available to the Village since they do not have other full-time employment. The Village allows part-time officers to decline work when there is a conflict with other employment or important personal business, but the Village, in the past, terminated an employe who refused work for reasons other than such conflicts.

7. The part-time officers have working conditions that are identical to the full-time officers as regards duties, methods of patrol, uniforms, weapons regulations and supervision. The starting hourly rate for full-time officers is \$9.25 as compared to \$8.00 for part-time. Part-time officers, unlike full-time officers, do not receive any fringe benefits other than retirement fund contributions required by state statute. The Village makes no commitment to part-time officers to offer them any full-time position that should become vacant.

8. Officers Johnson and Brown work a sufficient number of hours on a regular basis to warrant being found to be regular part-time employes of the Village.

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

CONCLUSIONS OF LAW

1. A question concerning representation exists within the following collective bargaining unit deemed appropriate within the meaning of Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act

All regular full-time and regular part-time employes of the Village of Poynette Police Department with the power of arrest, excluding managerial, supervisory and confidential employes.

2. Johnson and Brown are regular part-time employes of the Village and therefore are appropriately included in the collective bargaining unit described in Conclusion of Law 1.

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

ORDER

1. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission, within forty-five (45) days from the date of this direction in the bargaining unit consisting of all regular full-time and regular part-time employes of the Village of Poynette Police Department with the power of arrest, excluding managerial, supervisory and confidential employes who were employed on January 10, 1991 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 desire to be represented by Wisconsin Professional Police Association/Law Enforcement Employee Relations Division for the purposes of collective bargaining with the Village of Poynette on wages, hours and conditions of employment or not to be so represented.

2. The election petition filed by the Association in Case 2 is dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 10th day of January,
1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

VILLAGE OF POYNETTE (POLICE DEPARTMENT)

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

BACKGROUND

The Association, on July 13, 1990, filed a petition for an election among employes of the Village of Poynette Police Department. The only issue in dispute in this matter is the status of the two employes who work less than full-time. The Association contends they are regular part-time employes and should be included in the bargaining unit, while the Village contends they are casual employes and should be excluded.

DISCUSSION

In determining whether employes are regular part-time or casual employes, we have held that where a regular amount of work is available for part-time employes, individuals who perform something more than a de minimis amount of that work on a regular basis will be found to be part-time employes despite their ability to reject work. 1/ We turn to a determination of whether the work record of Johnson and Brown meets this test.

Johnson and Brown both worked at least one eight-hour shift in every two-week pay period since they were first hired by the Village, and are relied upon by the Village to provide law enforcement coverage, primarily on the weekends, when the work hours of the two full-time officers do not provide all the coverage desired by the Village. Thus, it is clear that there is a regular amount of work available to Johnson and Brown and that both individuals perform more than a de minimis amount of that work on a regular basis. Although the Board has directed Chief Johnson to limit Officer Brown's employment to 599 hours during 1991, it has not restricted his ability to distribute those hours throughout the year. Consequently, the Chief will be able to continue his current policy of relying on this officer for weekend work throughout the coming year. Given the foregoing, Johnson and Brown are regular part-time employes who are eligible to vote and included in the unit.

Dated at Madison, Wisconsin this 10th day of January, 1991.

1/ City of Phillips (Police Department), Dec. No. 26151 (WERC, 9/89); Village of Niagara, 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).

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
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