

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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THE LABOR ASSOCIATION OF	:	
WISCONSIN, INC.	:	Case 11
	:	No. 45818 ME-3131
Involving Certain Employees of	:	Decision No. 27056
	:	
	:	
VILLAGE OF BAYSIDE (PUBLIC SAFETY	:	
DEPARTMENT)	:	
	:	
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Appearances:

Mr. Thomas A. Bauer and Mr. Robert E. Blumenberg, Labor Consultants,  
 2825 North Mayfair Road, Wauwatosa, Wisconsin 53222, on behalf of  
 the Labor Association of Wisconsin, Inc.

Mr. Joseph A. Tanski, Village Manager, 9075 Regent Road, Bayside,  
 Wisconsin 53217, on behalf of the Village of Bayside.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

The Labor Association of Wisconsin, Inc., having on June 12, 1991, filed a petition requesting that the Wisconsin Employment Relations Commission conduct an election among all regular full-time and regular part-time dispatchers employed by the Village of Bayside Public Safety Department excluding other employees currently represented by a union, supervisory employees, confidential and managerial employees; and due to the parties' scheduling difficulties, hearing on said petition not having been held until August 21, 1991 in Bayside, Wisconsin before Mary Jo Schiavoni, an Examiner on the Commission's staff; and a stenographic transcript of said hearing having been received on August 28, 1991; and the parties having completed their briefing schedule on September 12, 1991; and the Commission, having considered the entire record, and being fully advised in the premises herein, makes and issues the following

FINDINGS OF FACT

1. The Labor Association of Wisconsin, Inc., hereinafter the Association, is a labor organization with offices located in Wauwatosa, Wisconsin.

2. The Village of Bayside, hereinafter the Village, is a municipal employer with offices located at Bayside, Wisconsin, and among its various governmental functions, operates a Public Safety Department wherein various individuals are employed.

3. This proceeding concerns a petition for election filed by the Association as to certain employees of the Village in the following unit:

All regular full-time and regular part-time dispatchers who work in the Village of Bayside Public Safety Department excluding other employees currently represented by the union, supervisory employees, confidential employees and managerial employees.

4. The Village at hearing and in its brief did not stipulate to the appropriateness of the requested collective bargaining unit. It argues that it is inappropriate to include part-time dispatchers with regular full-time dispatchers because there is too much turnover among the part-time dispatchers.

With respect to the part-time dispatchers, it claims temporary employment is the rule rather than the exception. In any case, with or without the part-time employes, the Village further believes that a unit comprised of only three or six employes is inappropriate simply on the basis of size.

5. The Association claims that a bargaining unit consisting exclusively of all regular full-time and regular part-time dispatchers is an appropriate unit. It argues that the part-time dispatchers are regular employes who share a community of interest with the regular full-time dispatchers.

6. With the exception of the six dispatchers 1/ (three full-time and three part-time) at issue herein and three unrepresented clerical employes who work in the Village Manager's office, all other employes are included in bargaining units represented by the Association or other labor organizations. The parties at hearing, however, stipulated that the three clerical employes should not be included in a residual unit with the dispatchers.

7. Currently there are three regular full-time and three part-time dispatchers in the employ of the Village of Bayside Public Safety Department. All dispatchers, both full and part-time, operate under the supervision of the public safety chief. They are responsible for typing, operating the console and telephone system, and performing office work related to both police and fire department functions. Some examples of the work performed by both full-time and part-time dispatchers are the following:

- 1) Take telephone calls for the department requesting services and information.
- 2) Operate the dispatch board for the department and monitor calls from other agencies as they occur at the dispatch desk.
- 3) Operate office machines such as copy machine, Fax machine, Acer 910 computer, paper shredder and any other equipment associated with the position of dispatcher.
- 4) Receive monies and issue receipts for traffic citations.
- 5) Receive monies and issue receipts for ordinance violations, bail money, copies of reports and official records and bicycle licenses.
- 6) Contact at the walk-in counter with citizen requests and payments.
- 7) Receive telephone calls for the Village Departments, when offices are closed.

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1/ At hearing, the record established the existence of three full-time and three part-time dispatchers. In its brief, the Village claims that there are three full-time and two part-time dispatchers, one part-time dispatcher having been recently discharged but whose position will be filled at some future time.

- 8) Possess a thorough knowledge of department procedures and policies for both the Volunteer section and the Public Safety Department.
- 9) Dispatch equipment in accordance with policy and mutual aid contracts and enhanced mutual aid contracts with the Village of Fox Point.

Both full-time and part-time dispatchers share common work location, supervision, work rules and regulations, and conditions of employment. They both wear uniforms and perform the same function with a few variations. The part-time dispatchers relieve the full-time dispatchers on week-ends, vacations, holidays and days off on each shift. The part-time dispatchers work the two days of a 4/2 - 5/2 rotation. They work regularly scheduled eight hour shifts averaging 16 or more hours a week. Part-time dispatchers may also move into full-time positions when vacancies arise. At least two of the current full-time dispatchers were previously part-time dispatchers.

8. Generally, full-time dispatchers are required to perform a few additional duties beyond those of part-time dispatchers e.g., the day shift dispatcher maintains inventory of all office supplies, while the 4PM to 12AM dispatcher compiles daily summary of police and fire activities and summarizes radio and telephone logs for the Manager and Chief, and the 12AM to 8AM dispatcher maintains inventory of all department forms making necessary copies. Full-time dispatchers may also 1) type statistical reports, correspondence, requisitions, and other material requiring special accuracy and neatness; 2) file and maintain a variety of complex records manually and into the computer data base; and 3) compile difficult or complex data at the request of a supervisor. They are also responsible for all computer generated messages and the transmission of those messages to the patrol officers or to the shift commander for appraisal and information dissemination.

9. Part-time dispatchers have a regular schedule and a continuing expectation of employment.

10. The part-time dispatchers share a sufficient community of interest with the full-time dispatchers so as to be appropriately included in the same bargaining unit as the full-time dispatchers.

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

#### CONCLUSIONS OF LAW

1. The part-time dispatchers are not casual or temporary employes but rather are regular part-time employes.

2. It is appropriate to include the part-time dispatchers with the full-time dispatchers in the same bargaining unit.

3. A question concerning representation exists among the employes included in the following collective bargaining unit deem appropriate within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act:

All regular full-time and regular part-time dispatchers employed by the Village of Bayside Public Safety Department excluding all other employes, supervisory employes, confidential and managerial employes.

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

#### DIRECTION OF ELECTION

It is directed that an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five days from the date of this directive, in the collective bargaining unit consisting of all regular full-time and regular part-time dispatchers employed by the Village of Bayside Public Safety Department excluding all other employes, supervisory, confidential and managerial employes who were employed by the Village of Bayside on October 16, 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 the

Labor Association of Wisconsin, Inc. for the purpose of collective bargaining on wages, hours and conditions of employment, or whether such employes desire not to be so represented by said labor organization.

Given under our hands and seal at the City of Madison, Wisconsin this 16th day of October, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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Herman Torosian, Commissioner

\_\_\_\_\_  
William K. Strycker, Commissioner

VILLAGE OF BAYSIDE (DEPARTMENT OF PUBLIC SAFETY)

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

POSITIONS OF THE PARTIES

Village

The Village makes two arguments. First, it argues that the potential unit, whether it is comprised of full-time dispatchers exclusively or full and part-time dispatchers as desired by the Association, is too small to be appropriate. It argues that such a small unit is not necessary and will result in greater expenses to the Village's taxpayers. These considerations, it submits, should preclude any potential certification of an additional unit with which the Village will be obligated to bargain.

The Village in its second argument strenuously maintains that part-time dispatchers should not be included in the same unit as regular full-time dispatchers. It maintains that the part-time dispatchers are temporary and/or casual employees. According to the Village, temporary part-time employment is the rule, not the exception. Until two or three years ago, there was only one full-time dispatcher and all of the remaining hours were filled by part-time dispatchers. The Village experienced great difficulty retaining part-time dispatchers at that time. In 1988, the Village hired additional full-time dispatchers to alleviate the part-time dispatcher turnover problem.

Association

The Association maintains that both regular full-time and regular part-time dispatchers enjoy a community of interest sufficient to include them in the same bargaining unit. The Association points to the similarities in job duties and working conditions between the full-time and part-time dispatchers in support of its position.

It disputes the Village's contention that the part-time dispatchers are temporary or casual employees noting the regularity of their schedules and their continuing expectation of employment.

With respect to the Village's position that the Commission should decline to find the unit requested to be appropriate because of its size, the Association stresses that such a holding would be inconsistent with previous Commission cases and employees' statutorily protected rights to organize as provided by the Municipal Employment Relations Act.

DISCUSSION

Status of Part-time Dispatchers

The Village alleges that the part-time dispatchers should not be included in the same bargaining unit because they are temporary or casual employees and do not share a community of interest with the regular full-time employees. It submits that part-time employees have come and gone in a revolving door fashion, quitting their employ after a few months on the job.

The Commission has held in previous cases that the determinative factor in deciding whether an employee is deemed a regular part-time employee is the regularity of employment. A casual employee is one who works irregularly and sporadically, because of the on-call nature of his/her work and/or the rejection of offered assignments. However, 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 regular part-time employes despite their ability to reject work. 2/

A temporary employe is one who lacks an expectation of continued employment. 3/

The record here establishes that the part-time employes work regularly scheduled hours each week, filling in for full-time employes on their scheduled days off. The part-time employes, in addition to working approximately 16 regularly scheduled hours per week, have a reasonable expectation of continuous employment. They are not employed on a "temporary" basis but rather with the expectation on the Village's part that they will remain in their positions permanently.

Therefore, the part-time dispatchers are not casual or temporary employes but rather are regular part-time employes.

#### Appropriate Unit

Although the Village primarily bases its contention that it is not appropriate to include part-time dispatchers with the regular full-time dispatchers because of the allegedly temporary nature of their employment, it is nonetheless appropriate to address the appropriateness of the petitioned-for unit in greater detail inasmuch as the Village has refused to stipulate to same.

The following factors are taken into consideration by the Commission in the establishment of appropriate collective bargaining units under the Municipal Employment Relations Act:

1. Whether the employes in the unit sought share a "community of interest" distinct from that of other employes;
2. The duties and skills of the employes in the unit sought as compared with the duties and skills of other employes;
3. The similarity of wages, hours and working conditions of employes in the unit sought as compared to wages, hours and working conditions of other employes;
4. Whether the employes in the unit sought have separate or common supervision with all other employes;
5. Whether the employes in the unit sought have a common workplace with employes in said desired unit or whether they share a workplace with other employes;
6. Whether the unit sought will result in undue

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2/ Oconto County (Sheriff's Department), Dec. No. 21847-C (WERC, 12/90); see also, Village of Poynette (Police Department), Dec. No. 26744, 26745 (WERC, 1/91).

3/ Manitowoc County, Dec. No. 8152-J (WERC, 11/9/90).

fragmentation of bargaining units; and  
7. Bargaining history. 4/

As Finding of Fact 7 makes abundantly clear, the part-time dispatchers share common supervision, duties, workplace, wages, hours and other conditions of employment with the full-time dispatchers. Although full-time dispatchers are expected to perform a few additional duties, the foregoing satisfies us that it is appropriate to include the part-time dispatchers in the same bargaining unit with the full-time dispatchers. Such a unit will not result in undue fragmentation of the Village's bargaining units.

Lastly, the Village argues that the Commission should refuse to conduct an election because the potential unit is too small. To accept this argument would be to deprive the employes of statutory rights under MERA. 5/ Thus, this Village argument is also rejected.

Dated at Madison, Wisconsin this 16th day of October, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

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4/ Marinette County, Dec. No. 26675 (WERC, 11/90); City of Cudahy, Dec. No. 21887-B (WERC, 1/90).

5/ City of Whitefish Bay, Dec. No. 6160 (WERC, 11/62).