

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Stipulation :
 Between :
 :
 CITY OF GREEN BAY :
 :
 and :
 :
 GREEN BAY POLICE BARGAINING UNIT :
 :
 Requesting a Declaratory Ruling :
 Pursuant to Section 111.70(4)(b), :
 Wis. Stats., Involving a Dispute :
 Between the Parties :
 :

Case 225
 No. 47407 DR(M)-498
 Decision No. 27359

Appearances:

Ms. Judith Schmidt-Lehman, Assistant City Attorney, Room 300, City Hall,
Mr. Thomas J. Parins, Attorney at Law, Jefferson Court Building, 126
 South Jefferson Street, Suite 101, P.O. Box 1626, Green Bay, Wisconsin

100 No
 54305,

FINDINGS OF FACT, CONCLUSION OF LAW
 AND DECLARATORY RULING

On May 13, 1992, the City of Green Bay and the Green Bay Police Bargaining Unit filed with the Wisconsin Employment Relations Commission a stipulation for declaratory ruling pursuant to Section 111.70(4)(b), Stats. The parties' stipulation included a waiver of hearing and a statement of agreed facts. The parties thereafter filed written argument and the briefing schedule was completed June 23, 1992.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following Findings of Fact, Conclusion of Law and Declaratory Ruling.

FINDINGS OF FACT

1. The City of Green Bay, herein the City, is a municipal employer having its principal offices at 100 North Jefferson Street, Green Bay, Wisconsin 54301.

2. The Green Bay Police Bargaining Unit, herein the Union, is a labor organization having its principal offices at 125 South Jefferson Street, Green Bay, Wisconsin 54301.

3. The parties stipulated to the following for the purposes of this proceeding:

(a) A dispute has arisen over whether the employer has the duty to bargain over the subject of the method by which officers select or are assigned to work groups from time to time.

(b) Shift officers work on an eight day work cycle, five days duty and three days off. To effectuate policy coverage seven days a week, the officers on each shift are divided into eight groups, with each group having a different starting day of the work week (i.e. group 1, Monday; group 2, Tuesday; group 3, Wednesday; etc.). The same is true, of course, as to the end of the work week. By this grouping method, five of the eight groups are scheduled to work on any given day of the week.

(c) Officers, and their families, tend to have the tendency to be socially closer to others of the same work group because of the commonality of the same days off.

(d) A change in the officer's group assignment will affect what weekends during the year his days fall on, the holidays he will or will not work, and the like.

(e) The City has little interest in which group a particular police officer is in, but does have a significant interest in insuring that officers are distributed substantially evenly amongst the groups on any particular shift so as to provide consistent manpower numbers on any given day. Because of this interest, the City wishes to make such distribution unilaterally rather than allowing officers to choose groups by seniority.

4. A proposal which addresses the manner in which employes are assigned to work groups is primarily related to hours, so long as the proposal does not prevent the City of Green Bay from adequately staffing all shifts or otherwise meeting service needs.

CONCLUSION OF LAW

The proposal specified in Finding of Fact 4 would be a mandatory subject of bargaining within the meaning of Sec. 111.70(1)(d), Stats.

DECLARATORY RULING 1/

The City of Green Bay has a duty to bargain under Secs. 111.70(1)(d) and (3)(a)4, Stats. with the Green Bay Police Bargaining Unit over the proposal referenced in the Conclusion of Law.

Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of August,
1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

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

(Footnote 1/ continues on the next page.)

(Footnote 1/ continued)

(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.
CITY OF GREEN BAY (POLICE DEPARTMENT)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND DECLARATORY RULING

Through their stipulation, the parties seek a ruling as to their duty to bargain over the identity of the individual officers to be assigned to a patrol group on a shift. In their stipulation, the parties summarized their positions as follows:

The position of the municipal employer is that the assignment of an officer to a particular group, from time to time, is a prerogative of management which it may exercise without collective bargaining with the bargaining unit, pursuant to management's right to

manage and direct its work force. It is the position of the Bargaining Unit that the selection of or assignment to work groups is a mandatory subject of bargaining in that this is a matter affecting the hours and conditions of employment of members of the Bargaining Unit.

The parties subsequently expanded upon their respective positions through post-stipulation argument.

The City asserts that it must have unilateral control over group staffing issues within a shift complement to avoid staffing imbalances within work groups. The City contends that when a group vacancy occurs, shift staffing imbalance occurs for a period of three days. It argues that it must have the ability to provide adequate and consistent manpower on all shifts.

The City contends that the manner in which officers are grouped within a shift does not affect the hours an officer works or the conditions of that employment. In this regard, the City argues that the shift an officer works and his vacation selection rights are not determined by the officer's group assignment. Further, the City asserts that because all officers work weekends and holidays, an officer's group assignment does not impact on this aspect of employe hours. The City concedes that group assignments do impact on which holidays and weekends will be worked.

Lastly, the City contests the Union's contention that the impact of a group assignment on an officer's social life is a valid factor to be considered herein. It argues that an officer's social life is not a condition of employment and that the City's right to manage the workforce should not be limited by employe friendships developed on and off the job.

Given the foregoing, the City asks the Commission to conclude that group assignments are a management prerogative over which the City does not have to bargain.

The Union asserts that it should have the right to bargain over the manner in which vacancies within a work group are filled.

The Union contends in this regard that an officer's work group assignment impacts upon employe hours and conditions of employment. It argues that a group assignment determines the hour and the day on which the officer's work week starts and ends, influences vacation selections, and affects the officer's family's social life.

The Union argues that its interest in bargaining over group assignments does not intrude upon the City's ability to determine the number of officers on a shift or within a group. Further, the Union asserts that it only wishes to bargain over assignment procedures among officers who are otherwise fully qualified to perform the work.

Given the foregoing, the Union asks that the Commission conclude that the City is obligated to bargain over group assignments.

DISCUSSION

In Beloit Education Association v. WERC 73 Wis.2d 43 (1976), Unified School District No. 1 of Racine County v. WERC 81 Wis.2d 89 (1977) and City of Brookfield v. WERC 87 Wis.2d 819 (1979) the Court set forth the definition of mandatory and permissive subjects of bargaining under Sec. 111.70(1)(d), Stats., as matters which primarily relate to "wages, hours and conditions of

employment" or to the "formulation or management of public policy," respectively.

In this dispute, the parties seek our general guidance as to whether the Union can bargain over the manner in which officers are assigned to shift groups. We do not have a specific proposal before us. Given the foregoing, our response must also be general in nature.

It is apparent that an employe's work schedule is significantly affected by the work group to which they are assigned. For instance, the work group assignment can determine whether or not an employe works a particular holiday. Thus, the Union correctly argues that there is a very strong relationship between employe "hours" and the group to which an employe is assigned.

The City asserts that it has an overriding management interest in being assured that it will have sufficient staff within each group to provide desired law enforcement services. The City specifically argues that when group vacancies occur, it must be able to reassign staff, at least on a short-term basis, to fill the vacancy and thus meet service needs.

We think it clear that the duty to bargain can accommodate both the employe and management interests expressed herein. Given the strong relationship to employe hours, the Union has a general right to bargain over the manner in which group assignments are made. 2/ However, the Union cannot require that the City bargain over any proposal which would prevent the City from adequately staffing all shifts or otherwise meeting service needs. 3/

Dated at Madison, Wisconsin this 17th day of August, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

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

2/ School District of Janesville, Dec. No. 21466 (WERC, 3/84); Beloit, supra.

3/ Sauk County, Dec. No. 26658 (WERC, 10/90); Milwaukee Schools, Dec. No. 17504 (WERC, 12/79).