

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:
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TEAMSTERS LOCAL UNION NO. 579	:
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Involving Certain Employes of	:
	:
	Case 1
	No. 47808 ME-3252
	Decision No. 27514
	:
VILLAGE OF SHARON	:
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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Ms. Naomi E. Eisman, 1555 North River Center Drive, Suite 206, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Local Union No. 579.

Sweet, Leece & Phillips, S.C., Attorneys at Law, by Mr. Randall G. Leece, 114 North Church Street, P.O. Box 318, Elkhorn, Wisconsin 53121, appearing on behalf of the Village of Sharon.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DIRECTION OF ELECTION

On July 20, 1992, Teamsters Local Union No. 579 filed a petition with the Wisconsin Employment Relations Commission requesting that it conduct an election among all regular full-time and regular part-time law enforcement employes with the power of arrest employed by the Village of Sharon Police Department excluding supervisory, managerial and confidential employes. A hearing on the petition was held on September 17, 1992, before Lionel L. Crowley, a member of the Commission's staff. A stenographic transcript was prepared and received on October 5, 1992. The parties filed briefs, the last of which was received November 13, 1992. The Commission having reviewed the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Teamsters Local Union No. 579, hereinafter referred to as the Union, is a labor organization with its offices located at 2214 Center Avenue, Janesville, Wisconsin 53546.

2. The Village of Sharon, hereinafter referred to as the Village, is a municipal employer with its offices located at 125 Plain Street, Sharon, Wisconsin 53585.

3. On July 20, 1992, the Union filed a petition requesting the Wisconsin Employment Relations Commission to conduct a representation election among all regular full-time and regular part-time employes with the power of arrest employed by the Village.

4. The Village employs two full-time police officers; Wayne Wetzel and Pat York, and two officers who work less than full-time; Frank Sauter and Judy Retzlaff. The Union contended at the hearing that Sauter and Retzlaff are regular part-time employes and should be included in the unit. The Village asserts that Sauter and Retzlaff are casual employes and should be excluded from the unit. The Village Police Chief, Gerald Thomas, schedules the part-time officers to work a shift at least one day a month on the monthly work schedules that he prepares. The part-time officers also work when someone is sick or on vacation and on special events, such as the 4th of July celebration and Harvest Fest. Sauter was hired in June, 1991, and averaged about one shift of work per two week pay period. In February, 1992, a full-time officer left the Village's employment and York was hired to replace him on June 8, 1992. Between February and June, 1992, Sauter worked from 25 to 53 hours per month due to the vacancy created by the full-time officer's leaving. After the vacancy was filled Sauter's hours were reduced. After Retzlaff was hired in June, 1992, she worked on four days in June but was undergoing training with another officer on each of those days. Thereafter, Retzlaff worked about one day per pay period although Sauter was off to get married during this period. The part-time officers are permitted to refuse work.

5. The part-time officers' duties are identical to the full-time officers. They work the same number of hours per shift and report to the same person, the Police Chief. Part-time officers are required to maintain residency in the Village. The starting salary for Retzlaff was \$8.00/hour, the same as York. Sauter makes \$8.34/hr. Part-time police officers receive no fringe benefits whereas full-time officers do.

6. Officers Sauter and Retzlaff are regularly scheduled one day per month and may or may not work additional hours depending on sick leave and vacation for which they would fill in. Officers Sauter and Retzlaff 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 law enforcement employes of the Village of Sharon Police Department with the power of arrest, excluding managerial, supervisory and confidential employes.

2. Sauter and Retzlaff 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

#### DIRECTION OF ELECTION

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 Sharon Police Department with the power of arrest, excluding managerial, supervisory and confidential employes who were employed on December 29, 1992, 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 Teamsters Local Union No. 579 for the purposes of collective bargaining with the Village of Sharon on wages, hours,

and conditions of employment or not to be so represented.

Given under our hands and seal at the City of  
Madison, Wisconsin this 29th day of December,  
1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_

A. Henry Hempe, Chairperson

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

VILLAGE OF SHARON (POLICE DEPARTMENT)

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

BACKGROUND

The Union, on July 20, 1992, filed a petition for an election among employes of the Village of Sharon Police Department. The only issue in dispute in this matter is the status of the two employes who work less than full-time. The Union 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.

POSITIONS OF THE PARTIES

The Union contends that the part-time officers should be included in the unit as their jobs are identical to those of the full-time officers except for their hours. The Union points out that the Village guaranteed the part-time officers one shift per month and they usually perform more than that. It submits that those officers work with regularity as they have averaged more than four hours per week in the calendar quarter immediately preceeding the eligibility date and are regular part-time employes.

The Village takes the position that the two part-time officers are casual employes and should be excluded from the bargaining unit. The Village submits that casual employes lack a regularity of work. It asserts that the anomaly of Sauter working when a full-time officer had resigned cannot be taken into the calculations of time worked on a regular basis and Retzlaff's training time does not constitute regular hours either. It notes that hours available for the part-time officers average exactly one shift per month. The Village contends the part-time officers might be considered to work with regularity depending on the measure of the time standard. The Village asserts that if months are the measure of regularity, then the officers could expect to work at least one shift in that period but if the pay period of two weeks is the measure of regularity, then the answer is different as under the pay period criteria, the work is certainly not regular and the part-time officers would not be considered regular part-time employes. The Village argues that even if the

monthly standard is used to meet the regularity test, the part-time officers work a de minimis amount of work. The Village points out that the total pay each month for the part-time officers is what could be called "pocket money" and the part-time officers average only 3.8% of the Department's time each month and this is de minimis. It requests exclusion of the part-time officers as casual employes.

## DISCUSSION

The Commission has held that the determinative factor in deciding whether employes are regular part-time or casual employes is the regularity of employment rather than a particular number of hours per week or month. 1/ 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/ Both Sauter and Retzlaff are scheduled by the Police Chief to work at least one shift per month and they may perform additional work when a regular full-time officer is sick or on vacation. We conclude that being scheduled to work on a regular basis by the Police Chief placing them on the regular monthly work schedule establishes that Sauter and Retzlaff have regular work. This is not a case of officers being simply available for work when it arises and regularity is determined from the actual hours worked. Here the hours are regularly scheduled.

A second issue is whether they work more than a de minimis number of hours. From the record, it is somewhat difficult to determine the number of hours worked on a regular basis by Sauter and Retzlaff. Sauter averaged about one shift each pay period in 1991. 3/ In 1992, his hours increased due to the absence of a full-time officer until June, 1992. 4/ Retzlaff was hired in June, 1992, and had a number of hours assigned for training purposes. 5/ If the training hours are considered a one time

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1/ Village of Maple Bluff, Dec. No. 26746 (WERC, 1/91); Mid-State VTAE District No. 14, Dec. No. 14526-A (WERC, 5/85); Kenosha Unified School District, Dec. No. 11293 (WERC, 9/72).

2/ Village of Poynette (Police Department), Dec. Nos. 20744 and 26745 (WERC, 1/91); City of Phillips (Police Department), Dec. No. 26151 (WERC, 9/89), Village of Niagara, Dec. No. 12446-A (WERC, 5/74).

3/ Ex-1.

4/ Ex-2.

5/ Ex-3.

occurrence and the vacancy created by the officer leaving an anomaly, then it would appear that the two part-time officers would be projected to work approximately one shift per month. We have held that employes who work at least one eight hour shift every two week pay period work more than a de minimis amount of that work on a regular basis. 6/ We have also held that officers who do not work as regularly or frequently as once a month do not perform more

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6/ Village of Poynette, Dec. Nos. 26744 and 26745 (WERC, 1/91).



than a de minimis amount of work on a regular basis. 7/ Although it appears that Sauter and Retzlaff might work only one shift a month sometime in the future, a review of the record indicates that Sauter and Retzlaff have worked approximately one shift per pay period. 8/ Therefore, based on the actual record as opposed to speculating on the future scheduling and hours of work for Sauter and Retzlaff, we conclude that both individuals perform more than a de minimis amount of work on a regular basis. The scheduling of Sauter and Retzlaff on the regular schedule for one shift per month plus the actual performance of more than a de minimis amount of work establishes regularity of employment. Consequently, Sauter and Retzlaff are regular part-time employees who are eligible to vote and are included in the bargaining unit.

Dated at Madison, Wisconsin this 29th day of December, 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

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7/ Village of Maple Bluff (Police Department), Dec. No. 26746 (WERC,1/91).

8/ Ex-1 indicates that Sauter worked about every pay period since his hire in June, 1991, with a total of 110 hours in about 11 pay periods. Ex-2 indicates that Sauter worked 243 hours over 12 pay periods. Ex-3 indicates Retzlaff worked about one shift per pay period since her hire and was scheduled for two shifts in September, 1992 to the date of hearing. It is also noted that Sauter was off in August and September when he asked for and got time off to get married.

