STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF LADYSMITH

Requesting a Declaratory Ruling
Pursuant to Sec. 111.70(4)(b), Stats.,
Involving a Dispute Between
Said Petitioner and

CITY OF LADYSMITH PROFESSIONAL POLICE ASSOCIATION

Case 25
No. 52032 DR(M)-551
Decision No. 28432

Appearances:

Mr. William R. Sample, Labor Relations Consultants, Inc., P.O. Box 808, Duluth, Minnesota 55801, for the City.

Mr. Thomas A. Bauer, Labor Consultant, The Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin 54915, for the Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

On January 3, 1995, the City of Ladysmith filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., as to a duty to bargain dispute between the City and The Labor Association of Wisconsin, Inc., and its affiliated Local 207, City of Ladysmith Professional Police Association.

The parties waived hearing and filed written argument in support of and in opposition to their respective positions, the last of which was received April 12, 1995.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The City of Ladysmith, herein the City, is a municipal employer providing law

enforcement services to its residents and having its principal offices at 120 Miner Avenue West, P.O. Box 431, Ladysmith, Wisconsin 54848.

2. The Labor Association of Wisconsin, Inc., and its affiliated Local 207, City of Ladysmith Professional Police Association, herein the Union, is a labor organization functioning as the collective bargaining representative of certain regular full-time and regular part-time law enforcement employes of the City and having its principal offices at 206 South Arlington Street, Appleton, Wisconsin 54915.

3. The City and the Union disagree as to their duty to bargain over continuation of a practice which guarantees regular part-time employes represented by the Union a regular ten hour shift of work when they replace regular full-time employes who are absent from their regular shift for various reasons (i.e., vacation, illness, etc.).

4. To the extent the practice set forth in Finding of Fact 3 mandates that the City provide a specific level of law enforcement service, the practice primarily relates to the formulation and management of public policy.

5. To the extent the practice set forth in Finding of Fact 3 does not mandate that the City provide a specific level of law enforcement service but rather establishes wages, hours and conditions of employment, the practice primarily relates to wages, hours and conditions of employment.

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

CONCLUSIONS OF LAW

1. As reflected in Finding of Fact 4, the disputed practice is a permissive subject of bargaining.

2. As reflected in Finding of Fact 5, the disputed practice is a mandatory subject of bargaining.

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

DECLARATORY RULING 1/

1. As reflected in Finding of Fact 4, the City of Ladysmith and The Labor Association of Wisconsin, Inc., Local 207, City of Ladysmith Professional Police Association do not have a duty to bargain over the disputed practice within the meaning of Secs. 111.70(1)(a) and (3)(a)4,

Stats.

1/ See Footnote 1 beginning on page 3

2. As reflected in Finding of Fact 5, the City of Ladysmith and The Labor Association of Wisconsin, Inc., Local 207, City of Ladysmith Professional Police Association have a duty to bargain over the disputed practice within the meaning of Secs. 111.70(1)(a) and (3)(a)4, Stats.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of July, 1995.

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 page 4)

(Footnote 1 continued from page 3)

(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 LADYSMITH

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

Before considering the specific proposal at issue herein, it is useful to set forth the general legal framework within which disputes over the duty to bargain must be determined.

Section 111.70(1)(a), Stats., defines collective bargaining in pertinent part as

> ". . . the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, ... the employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes . . ." (emphasis added).

When interpreting Sec. 111.70(1)(a), Stats., the Wisconsin Supreme Court has concluded that collective bargaining is required over matters primarily related to wages, hours and conditions of employment but not over matters primarily related to "formulation of basic policy" or the "exercise of municipal powers and responsibilities in promoting the health, safety, and welfare for its citizens." City of Brookfield v. WERC, 87 Wis. 2d 819, 829 (1979). See also 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). A municipality may choose to bargain over a matter which is not primarily related to wages, hours and conditions of employment if it is not expressly prohibited from doing so by legislative delegation. Brookfield, supra. It should be noted that a proposal's intrusion into statutorily established employer rights does not generate a finding that the proposal is permissive unless that intrusion outweighs the proposal's relationship to wages, hours and conditions of employment. Glendale Prof. Policeman's Association v. Glendale, 83 Wis. 2d 90 (1978); Beloit, supra.

Positions of the Parties

The City argues the disputed practice is a permissive subject of bargaining because it impermissibly restricts the City's ability to make law enforcement service level choices. City of Milwaukee Dec. No. 27997 (WERC, 3/94). The City contends that the obligation to use part-time

officers for a full ten hour shift deprives it of the fiscal freedom it must have to provide service of a level consistent with budgetary constraints imposed by the electorate. City of Brookfield v. WERC, 87 Wis. 2d 819 (1979). The City alleges there are no employe safety implications to the practice and further that there is no evidence to support the Union claim that the City is motivated by a desire to reduce its benefit obligations to part-time officers while maintaining existing service levels.

The City asserts that it has timely raised this dispute for Commission consideration and that the Commission should find the practice to be permissive.

The Union initially argues that the City is inappropriately seeking to use the declaratory ruling process to end a practice which it has been unable to end through collective bargaining. It contends the Commission should not allow the City to proceed in this manner.

As to the merits of the dispute, the Union contends the practice primarily relates to wages, hours and conditions of employment and that the Commission should therefore conclude the practice is a mandatory subject of bargaining.

DISCUSSION

Through this proceeding, the City asks us to determine its duty to bargain over the continuation of an existing practice which guarantees regular part-time unit employes a regular ten hour shift of work (and compensation) when they replace regular full-time employes who are absent from their regular shift for various reasons (i.e., vacation, illness, etc.).

Although the Union contends it is inappropriate for the City to be bringing this issue to us for resolution, the Sec. 111.70(4)(b), Stats., declaratory ruling process is clearly available to the City. To their mutual credit, the parties first sought to resolve their dispute through the collective bargaining process. When that effort failed and where, as here, the parties disagree over their duty to bargain over the practice, a declaratory ruling petition filed pursuant to Sec. 111.70(4)(b), Stats., is an available and appropriate mechanism for resolving the dispute.

Turning to the merits of the dispute, we conclude the practice has both mandatory and permissive components.

To the extent the practice prohibits the City from deciding that it does not wish to provide law enforcement services for an entire ten hour shift, the practice is permissive. As persuasively argued by the City, decisions as to the level of service which will be provided primarily relate to the formulation of public policy and to the exercise of municipal powers and responsibility in promoting the safety and welfare of citizens. City of Milwaukee, Dec. No. 27997 (WERC, 3/94); Crawford County, Dec. No. 20016 (WERC, 12/82).

However, to the extent the practice establishes employe hours and level of compensation once the service choice has been made, the practice is primarily related to wages, hours and conditions of employment. Thus, to the extent the practice guarantees part-time officers ten hours of compensation (and any resultant fringe benefit entitlement) whenever they are called in to work, the practice is a mandatory subject of bargaining so long as the City can choose to have less than ten hours of service provided. Green County Dec. No. 20056 (WERC, 11/82). To the extent the practice may prevent the City from using several part-time officers to fill a single ten hour shift, the practice is a mandatory subject of bargaining because it does not intrude into the City's decision to provide law enforcement service during those ten hours.

Given the foregoing, we have concluded that the practice has both mandatory and permissive elements.

Dated at Madison, Wisconsin, this 6th day of July, 1995.

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