

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

EAU CLAIRE COUNTY

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

GENERAL TEAMSTERS UNION, LOCAL NO. 662

and

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION**

Case 190
No. 54400
DR(M)-581

DECISION NO. 29305

Appearances:

Mr. Keith R. Zhems, Corporation Counsel, 721 Oxford Avenue, Eau Claire, Wisconsin 54703-5481, for the County.

Mr. Richard L. Thal, General Counsel, 7 North Pinckney Street, Suite 200, Madison, Wisconsin 53703, for the Wisconsin Professional Police Association.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by **Ms. Marianne Goldstein Robbins**, 1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, for the General Teamsters Union, Local No. 662.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

On August 30, 1996, Eau Claire County filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., as to the County's duty to bargain with the Wisconsin Professional Police Association (WPPA) over certain matters. WPPA and General Teamsters Union, Local No. 662 (Teamsters) filed written position statements with the Commission on September 9 and 11, 1996, respectively.

Hearing on the petition was scheduled for November 18, 1996 and then indefinitely postponed at the request of the parties so that settlement discussions could take place. Settlement did not occur and the matter was scheduled for hearing to be held June 12, 1997. Prior to that hearing, the

parties advised the Commission that they were preparing a stipulation of facts and

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that the hearing should be canceled. The Commission received a stipulation of facts on June 19, 1997. The parties thereafter filed written argument in support of their respective positions, the last of which was received August 20, 1997.

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

FINDINGS OF FACT

1. The Petitioner is a quasi-municipal corporation duly organized under the laws of Wisconsin, with its principal offices located in the County Courthouse, 721 Oxford Avenue, Eau Claire, Wisconsin, 54703, and is an employer within the meaning of MERA, Sec. 111.70, Wis. Stats.

2. The Respondent, General Teamsters Union Local No. 662, "Teamsters" is a union affiliated with Wisconsin Teamsters Joint Council No. 39, Central States Drivers Council and is the exclusive bargaining agent for non-supervisory deputy sheriffs in the Eau Claire County Sheriff's Department.

3. Prior to July 1, 1990 Merle Baker was the business representative of Teamsters and acted as chief spokesperson in negotiations for the non-supervisory deputy sheriffs. From July 1, 1990 to August 1, 1994 Christel Jorgensen represented the deputy sheriff unit. From August 1, 1994 until October 15, 1996 Jorgensen shared responsibility for the unit with James Newell, who thereafter had full responsibility for the unit until February 17, 1997 when Michael Thoms became the business representative for the unit.

4. The Respondent, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, "WPPA/LEER Division" is a union, which is the exclusive bargaining agent for civilian correctional officers in the Eau Claire County Sheriff's Department.

5. Len Jaglarski is the business agent of WPPA/LEER Division and acts as chief spokesperson in negotiations for the civilian correctional officers.

6. The Eau Claire County Board of Supervisors created six new positions, four effective January 1, 1989 and two effective June 1, 1989 entitled civilian correctional officer to staff the newly expanded portion of the county jail and thereafter when vacancies occurred in deputy jailer positions to convert such positions to correctional officer positions.

Teamsters filed a grievance which was ultimately sustained by WERC Staff Arbitrator,

David E. Shaw, on November 2, 1989. The Arbitrator found the County had breached the Collective Bargaining Agreement by creating the position of civilian correctional officer, directed the County to cease and desist from using civilian correctional officers to perform the duties of jailers and directed back pay for the number of hours worked by the civilian correctional officers at the overtime jailer rate. A copy of the award is included in the record as Exhibit 1. A copy of the 1988-89 contract on which the award is based is included in the record as Exhibit 2.

Teamsters and Eau Claire County entered into negotiations regarding the civilian correctional officers, which resulted in enhanced wages and benefits for deputies including the creation of Sections 17.09, 17.10 and 17.11 of the non-supervisory unit. Section 17.09 requires all overtime regardless of classification to be first offered to protective service Jailers before offering any overtime to civilian correctional officers. Section 17.09 was first incorporated for

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the period January 1, 1990 through December 31, 1991 and was continued in all subsequent contracts. The provision states:

With the exception of the Jail, the Sheriff shall not assign non-protective service employees to protective service positions, or vice-versa. Shift selection and overtime opportunities shall be offered first to protective service Jailers, then to Civilian Correctional Officers, based upon seniority.

A copy of the 1990-91 non-supervisory unit contract is included in the record as Exhibit 3. The relevant contract language has remained unchanged in all successor non-supervisory unit contracts. As the language indicates, preference for shift selection and overtime applies only to "protective service Jailers", not to deputy sheriffs holding classifications outside the Jail such as patrol officer, detectives or process server.

9. Based on the successful conclusion of negotiations, on March 8, 1990 Eau Claire County, Teamsters Union Local No. 662 and the Eau Claire County Sheriff signed an agreement settling all litigation arising out of the reorganization of the Sheriff's Department involving the civilian correctional officers. A copy of the Resolution and Fact Sheet settling the litigation is included as Exhibit 4. A copy of the Letter of Agreement is included in the record as Exhibit 5.

10. Effective January 1, 1990 a separate civilian unit was created for purposes of collective bargaining in the Sheriff's Department, represented by General Teamsters Union, Local No. 662 through December 31, 1994.

11. Since January 1, 1995, the civilian unit has been represented by the WPPA/LEER Division. The WPPA/LEER Division submitted a Final Offer in Case 187 No. 53583 INT/ARB-7853 for a successor agreement to the calendar year 1995 contract for the civilian unit, which was forwarded by WERC Investigator Richard B. McLaughlin on August 20, 1996 to the County, proposing to amend the WPPA contract to provide for assigning all overtime in the jail within the bargaining unit and classification where the vacancy occurs and granting all employees the opportunity for shift selection and days-off rotation based solely on the date of hire of all employees who work in the jail. A copy of the WPPA/LEER Division Final Offer is attached and incorporated by reference as Exhibit 6, and a copy of the WPPA/LEER Division Revised Final Offer sent under

cover of a May 7, 1997 letter from WPPA General Counsel Richard Thal to Eau Claire County Personnel Director Marvin Niese, is attached and incorporated by reference as Exhibit 7.

12. Violations of the Collective Bargaining Agreements with Teamsters and WPPA/LEER Division are subject to a grievance procedure established at ARTICLE 5 and an arbitration procedure at ARTICLE 6. Attached and incorporated by reference as Exhibit 8 is the 1996-97 Non-Supervisory Unit Contract and as Exhibit 9 is the 1995 Civilian Unit Contract.

Adoption of the WPPA/LEER division's final offer or revised final offer would require Eau Claire County to first offer overtime work to "employees in order of their seniority, in the bargaining unit and classification where the vacancy occurs." Because Section 17.09 of the existing Collective Bargaining Agreement between the County and Teamsters Local No. 662 requires the County to first offer all overtime opportunities in the jail to jailers in the Teamsters' bargaining unit, the language now in Section 17.09 and the overtime language in WPPA's final offer or revised final offer are incompatible.

14. Teamsters is interested in its capacity as a party to the current non-supervisory bargaining unit Collective Bargaining Agreement and as collective bargaining representative for non-supervisory deputy sheriffs.

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15. WPPA/LEER Division is interested in its capacity as a party to the predecessor civilian Collective Bargaining Agreement and as collective bargaining representative for civilian employees of the Sheriff's Department.

16. This Petition is brought pursuant to Section 111.70(4)(b), Wis. Stats., by the Petitioner County in its capacity as a party to the Collective Bargaining Agreements between Eau Claire County and Teamsters and Eau Claire County and WPPA/LEER Division for purposes of procuring a declaration of rights regarding the Petitioner's responsibility to negotiate the WPPA/LEER Division seniority proposal in light of the existing provision in the General Teamsters Union, Local No. 662 non-supervisory contract.

17. The WERC shall take administrative notice of the Declaratory Ruling file "Eau Claire County (Sheriff Dept.) Case 190 No. 54400 DRM-581".

18. At the time the civilian correctional officer positions were first created, there were 13 protective services jailers. At the present time there are five protective services jailer and 19 correctional officer positions authorized.

19. The WPPA takes the position that under its revised final offer jailers in the Teamsters' bargaining unit would continue to receive overtime opportunities generated by jailers' absences, but correctional officers in the WPPA unit would receive overtime opportunities generated by correctional officers' absences.

20. Attached as Exhibit 10 is the current seniority list for the non-supervisory protective service unit.

21. Attached as Exhibit 11 is the current civilian unit seniority list.

22. Attached as Exhibit 12 is the overtime worked in the jail for 1995 and 1996.

23. On May 6, 1997 the Eau Claire County Board of Supervisors approved the location of the Huber Center in a third floor two-tier addition over the Human Services wing of the current Courthouse.

24. Eau Claire County Sheriff's Department Captain Greg Lieberg, if called to testify, would state that as a result of the Huber Center addition he projects a staffing increase of 8.4 FTE correctional officer positions. Teamsters Local No. 662 objects to this testimony on the basis that it is speculative.

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

CONCLUSION OF LAW

The overtime allocation proposal submitted by the Wisconsin Professional Police Association is a mandatory subject of bargaining within the meaning of Sec. 111.70(1)(a), Stats.

Based upon the above and foregoing Finding of Facts and Conclusion of Law, the Commission makes and issues the following

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DECLARATORY RULING

Eau Claire County has a duty to bargain with the Wisconsin Professional Police Association within the meaning of Secs. 111.70(1)(a) and (3)(a)4, Stats. over the disputed overtime allocation proposal upon the expiration of any currently existing contract between Teamsters and Eau Claire County which contains the provision set forth in Finding of Fact 8.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of February, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Eau Claire County

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

POSITIONS OF THE PARTIES

The County seeks a declaration of the extent of its obligation to bargain over the WPPA overtime proposal. The County contends that the proposal seeks rights to overtime currently possessed by the members of the Teamsters' unit. If it is obligated to bargain over this proposal, the County is concerned that it will be placed in a position of having two units claiming the same work. The County concludes its brief by stating:

The County is not taking a formal position supporting either the WPPA or Teamster proposal. The County is willing to continue to work with the existing Teamster language or the proposed WPPA language. However, the County cannot work with both.

Teamsters argue the WPPA proposal is a non-mandatory subject of bargaining because the proposal seeks to acquire the work of the Teamsters' sworn deputies bargaining unit. Teamsters assert the Commission has consistently found such work acquisition proposals (as distinguished from work protection proposals) are not mandatory subjects of bargaining.

Teamsters contend the parties' dispute must be viewed in the historical context in which (1) all jail work was once performed by Teamsters sworn deputy unit members; and (2) exclusive right to such work was bargained away only on the condition that deputies received preference over civilian jailers as to shift selection and overtime. In this context, Teamsters argue the Commission should reject WPPA's contention that the WPPA proposal is a mandatory subject of bargaining because it only seeks overtime created by absences of WPPA civilian jailers. Teamsters assert its unit has existing preference rights to all jail overtime and that the WPPA proposal thus seeks Teamster work.

Teamsters contend the Commission will be enhancing stability in collective bargaining relationships by protecting the existing allocation of shared jail work. Failure of the Commission to acknowledge the existing allocation will have the detrimental effect of discouraging union/employer efforts to reach reasonable agreements on performance of unit work by non-unit employees because unions will rightly fear that any such agreement will ultimately prevent the union from protecting any of its work.

Teamsters urge the Commission to reject WPPA's suggestion of a tripartite bargaining procedure for resolution of this dispute. Teamsters contend there is no statutory authorization for such a process and that, in any event, there is no intra-union jurisdictional dispute to be resolved there. Teamsters contend it is clear that it possesses the work in question. Teamsters further allege that to the extent the WPPA proposal seeks a result which would conflict with the requirements of the existing contract between the Teamsters and the County, the proposal is a prohibited subject of

bargaining.

WPPA argues that although its proposal is a mandatory subject of bargaining, the Commission should nonetheless fashion a trilateral dispute resolution procedure and require the parties to participate therein to resolve this jurisdictional dispute. In the alternative, WPPA argues that Teamsters and WPPA run the risk of having the Commission find the issue of

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overtime distribution to be a permissive subject of bargaining, in which case the County could simply act as it sees fit upon expiration of the existing County/Teamster overtime contract language.

WPPA contends that it is incorrect for Teamsters to argue that overtime is Teamsters unit work. WPPA argues that members of its unit regularly perform the work in dispute on both a regularly scheduled and overtime basis. Thus, WPPA argues this is work which is shared between the two units. Particularly as to overtime generated by the absence of a WPPA unit member, WPPA contends that Teamsters unit employees ought not have a perpetual right to preference for such overtime opportunities. WPPA further notes that the existing Teamster contract language gives new Teamster unit employees overtime preference vis-a-vis WPPA unit employees with much greater seniority.

WPPA denies that its proposal is a prohibited subject of bargaining. It contends that its proposal is designed to first take effect upon the expiration of the existing Teamsters/WPPA contract and thus cannot interfere with any existing contract rights. In the alternative, WPPA alleges that if alteration of the conditions of employment of another unit constitutes a valid basis for finding a proposal to be prohibited, then the Teamster/County overtime contract language is also a prohibited subject of bargaining because it has altered WPPA unit members' conditions of employment since the language came into existence.

DISCUSSION

All parties correctly agree that proposals related to the allocation of overtime are generically mandatory subjects of bargaining primarily related to wages and hours. Here, the dispute is over the employer's duty to bargain regarding overtime allocation with one union (WPPA) where the employer has an existing overtime allocation agreement (or status quo maintenance obligation during a contract hiatus) with another union (Teamsters).

We have held that an employer has a "critically important policy interest" in being able to avoid an obligation to bargain with two different units over the same work. WAUKESHA COUNTY TECHNICAL COLLEGE, DEC. NO. 28952 (WERC, 6/96); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 20399-A (WERC, 9/83). Thus, as a general matter, we think it clear that the County cannot be compelled to bargain with both WPPA and Teamsters regarding the allocation of the same overtime work.

We have further held that proposals which seek to protect unit work are mandatory subjects of bargaining, WAUKESHA COUNTY TECHNICAL COLLEGE, SUPRA; CITY OF RIVER FALLS, Dec. No. 28384 (WERC, 5/95), while proposals which seek to acquire non-unit work are not. WAUKESHA

COUNTY TECHNICAL COLLEGE, SUPRA. We proceed to determine whether the overtime is exclusively Teamster unit work (in which case the WPPA proposal is a permissive subject of bargaining because it is seeking to acquire non-unit work) or whether the overtime has become unit work for both Teamsters and WPPA (in which case the WPPA proposal would be a mandatory subject of bargaining to extent it is limited to protecting only WPPA work).

Teamsters correctly point out that all jailer work was once the work of the Teamsters sworn unit. However, since 1990, pursuant to an agreement between Teamsters and the County, non-sworn employes (i.e., civilian jailers in a separate unit once represented by Teamsters and now represented by WPPA) have performed jailer work on both a regular and overtime basis. At present, WPPA unit members perform a majority of the regular shift jailer work and roughly 40 percent of the overtime.

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Teamsters forcefully argue that the sharing of overtime occurs only because Teamsters bargained contract language which allows the work it once exclusively possessed to be shared, and then only if no Teamster unit employes are interested in performing same. In such circumstances, it can well be argued that the work in question continues to be Teamsters work and that Teamsters ought not lose the right to bargain over protecting and allocating that work simply because they struck a bargain with the County which gave the County some flexibility. On the other hand, it cannot reasonably be argued that Teamsters have retained any exclusive claim or right of first refusal as to regularly scheduled jailer work and it can be viewed as somewhat incongruous to allow a union to retain exclusive bargaining rights for overtime work where it lacks these rights for the regularly scheduled work.

While it presents a close question, we are satisfied that under the unique facts of this case, the current reality as to the allocation of jailer work warrants a conclusion that overtime jailer work has become unit work for both Teamsters and WPPA. Thus, we are further satisfied that Teamsters and WPPA are each entitled to bargain with the County over the allocation of that portion of the overtime which is each union's unit work.

WPPA's proposal identifies its "unit work" as overtime generated by vacancies within the job classifications which it represents (Correctional Officers, Cooks and Nurses). We find this to be an appropriate way to identify unit work (i.e., was the overtime generated by the absence of a sworn or non-sworn employe?) and thus find the WPPA proposal to be a mandatory subject of bargaining.

Remaining for resolution is the question of whether the WPPA can pursue the right to seek the overtime its unit generates in the face of an existing Teamster contract which gives Teamster unit members the first right to all overtime. In this regard, given the existing contract and the County's good faith doubt as to which unit had the right to bargain over the overtime, we conclude that WPPA cannot compel the County to bargain with it over the WPPA overtime proposal until the expiration of any currently existing Teamster contract with the County. Upon the expiration of any such agreement, the County is obligated to so bargain with WPPA. Because the Teamster overtime language is a permissive subject of bargaining to the extent it covers WPPA unit work, the

County is not obligated to bargain with Teamsters over continuation of the existing Teamster contract overtime language and has no status quo obligations which will conflict with any bargain the County may strike with WPPA over WPPA unit overtime.

Dated at Madison, Wisconsin, this 10th day of February, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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