

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LEER DIVISION**

Involving Certain Employes of
VILLAGE OF SPRING GREEN

Case 1
No. 55373
ME-3609

Decision No. 29334

Appearances:

Attorney Richard Thal, Wisconsin Professional Police Association, 7 North Pinckney Street, Madison, Wisconsin, 53703, for the Petitioner.

Attorney Allan C. Peckham, 115 North Washington Street, Spring Green, Wisconsin, 53588, for the Village.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION**

On July 17, 1997, the Wisconsin Professional Police Association/LEER Division filed a Petition For Election with the Wisconsin Employment Relations Commission, seeking a representation vote in a bargaining unit described as "All regular full-time and regular part-time employees with the power of arrest employed by the Spring Green Police Department, excluding supervisory, confidential and managerial personnel." On August 19, 1997, the parties filed with the Commission a Stipulation For Election for such a unit, but could not agree on a voter eligibility list for such an election.

On November 19, 1997, hearing in the matter was held before Examiner Stuart Levitan, a member of the Commission's staff. A stenographic transcript of the proceeding was available

No. 29334

to the parties by December 3, 1997. The parties filed written arguments on January 12, 1998, and on January 20, 1998, waived the right to filed reply briefs. The Commission sought and received additional information from the parties and the record was closed March 10, 1998.

The Commission, being fully advised in the premises, now issues the following

FINDINGS OF FACT

1. Wisconsin Professional Police Association/LEER Division, herein the Association, is a labor organization with offices at 7 North Pinckney Street, Madison, Wisconsin.

2. The Village of Spring Green, herein the Village, is a municipal employer with offices at 112 West Monroe Street, Spring Green, Wisconsin. Among other functions, the Village maintains a Police Department consisting of a Chief of Police, other sworn personnel and a variety of administrative and other unsworn personnel.

3. The parties have stipulated to an election to determine whether there is a desire for representation among the employees in a bargaining unit described as:

all regular full-time and regular part-time employees with the power of arrest employed by the Village of Spring Green Police Department, excluding supervisory, confidential and managerial employees.

The parties are in agreement that full-time employees Runice and Miller and part-time employee Stephens are eligible to vote. The parties disagree over the voting and unit eligibility status of part-time employees Fitters and Watrud, with the Village contending they are regular part-time employees and the Association contending they are casual employees.

4. Prior to June, 1997, the Village employed a Chief of Police and three other full-time officers; as of the time of hearing, the Village employed the Chief, Charles D. Elver, Jr., and two other full-time officers, Sergeant Steve Runice and Officer Eric Miller, and had decided to leave the fourth position vacant for budgetary reasons. To address the need for adequate police coverage, the Village decided to increase its utilization of part-time officers. The Village employs as part-time officers Tyler Stephens, Sara Watrud and William Fitters, plus approximately six reserve officers which it utilizes when part-time officers are not available. During the period when the Village had four full-time officers, it had 320 hours of police protection every two weeks; with the elimination of the fourth position and the increase in hours for part-time officers, the Village has a combined police presence of about 310-320 hours per two-week period, of which approximately 75 hours come from officers other than Elver, Runice and Miller. At the time of hearing, the Village's expectation for 1998 was no increase in total hours worked, and possibly a slight decrease, with the further possibility of Chief Elver being

scheduled for more patrol hours than he was for the period when there were four full-time officers. In the event of a need to follow-up on an ongoing investigation, part-time and reserve officers can request the assignment of additional hours of duty.

Officer Fitters holds a position as a permanent, full-time officer with the Evansville Police Department, on a regular schedule of seven 12-hour shifts in each 14 days. The position of Chief of the Evansville Department is vacant, thus requiring Evansville officers to work additional shifts. Officer Watrud is a probationary, full-time officer with the Monona Police Department, working a regular 6-day, 3-day work rotation, which employment she accepted approximately six weeks after she started work for the Village in June, 1997. For both Fitters and Watrud, their Spring Green employment is of secondary importance to the standard and exigent scheduling demands of their respective full-time employment.

5. In preparing the monthly shift schedule, Chief Elver first schedules Runice and Miller based on their 6-2, 6-2, 5-3 rotation; he then contacts the Fitters, Watrud and Stephens to cover shifts left unaddressed by this rotation. Stephens, Fitters and Watrud have the right to reject work offered. Full-time and part-time officers are all paid an hourly wage. In calendar year 1997, through the November 19, 1997 hearing, Stephens worked in every pay period, with hours ranging from 10 to 101 per two-week period. In that same time frame, Fitters did not work the first three pay periods of the year, nor the periods of 3/23-4/5, 9/7-9/20, 9/21-10/4, 10/19-11/1 and 11/2-11/15, with the period 7/27-8/9 being indicated as vacation; he was scheduled for shifts on September 22 and October 1, which shifts he did not work due to illness and other reasons. Between the November 19, 1997 hearing and March 5, 1998, Fitters has worked only one shift (8 1/2 hours). Watrud began work the pay period of 6/15-6/28, and worked each period through the November 19, 1997 hearing, with hours ranging from 3 to 50.

6. The three part-time officers perform the same patrol, investigatory and liaison activities, and have the same requirements of standards and qualifications, as do the regular full-time officers. Their pay differs, in that Runice, a five-year employe, earns \$12.73 hourly, Miller, a two-year employe \$11.63, and the part-time officers, regardless of tenure, \$8.50. The full-time officers receive 75 percent health insurance, paid vacation, paid holidays and a uniform allowance; the part-time officers receive an initial uniform allowance

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., Stats.:

All regular full-time and regular part-time employees with the power of arrest employed by the Village of Spring Green Police Department excluding supervisors and confidential, managerial or executive employees.

2. Sara Watrud is a regular part-time employee of the Village of Spring Green Police Department and therefore is eligible to vote and appropriately included in the proposed collective bargaining unit described in Conclusion of Law 1.

3. William Fitters is not a regular part-time employee of the Village of Spring Green Police Department but is a casual employee and therefore is not eligible to vote or presently appropriately included in the proposed collective bargaining unit described in Conclusion of Law 1.

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

DIRECTION OF ELECTION

An election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Direction in the voting group consisting of all regular full-time and regular part-time employees with the power of arrest employed by the Village of Spring Green Police Department, excluding supervisors and confidential, managerial or executive employees, who were employed March 12, 1998, except such employees as may prior to the election quit their employ or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by Wisconsin Professional Police Association/LEER Division for the purpose of collective bargaining with the Village of Spring Green, or whether such employees desire not to be so represented by said labor organization.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of March, 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/

VILLAGE OF SPRING GREEN (POLICE)

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

POSITIONS OF THE PARTIES

The Association's Position

In support of its contention that the subject positions are casual rather than regular part-time, the Association asserts that the Village has not and cannot schedule Officers Fitters and Watrud to work on a regular basis because they have made their primary commitment to other departments where they have full-time positions. Given such commitments, and the distance between the other departments and Spring Green, Fitters and Watrud are not able to work for the employer on a regular basis. The Commission has held that part-timers who work irregularly and sporadically are casual employees not included in bargaining units. The record evidence here shows that Fitters and Watrud do not work on a sufficiently regular basis to warrant inclusion in the voting group and bargaining unit. Accordingly, the Commission should find them to be casual employees.

The Village's Position

In support of its contention that the subject positions are regular part-time positions, the Village asserts that Officer Watrud meets and exceeds every criteria for regular full-time status, in that she has worked every pay period during her employment with the Village, has averaged better than two shifts per pay period, and has worked significantly longer than employees the Commission has previously found to be regular part-time. Because she is not just available but is scheduled and has worked substantial hours, for the most part, in every pay period, the Commission should deem her to be a regular part-time employee.

Officer Fitters also qualifies as a regular part-time officer as well, even though he has not worked in every pay period due to the anomaly of his full-time employer temporarily being without a Police Chief, thus occasioning a temporary curtailment of his availability to the Village. Further, while he had not work four of the previous five pay periods, he was scheduled for two shifts in that period, which shifts he was unable to perform. The Village fully expects to schedule Fitters in the future.

DISCUSSION

The issue before us is whether part-time sworn employees Fitters and Watrud of the Village of Spring Green Police Department are casual employees who should be excluded from the list of eligible voters in the "regular full-time and regular part-time" unit election to which the parties have stipulated, or whether said employees are regular part-time employees who are eligible to vote. The Association contends that Officers Fitters and Watrud are casual employees; the Village contends they are regular part-time employees.

The Commission has held that "the determinative factor in deciding whether employees are regular part-time or casual employees is the regularity of employment rather than the particular number of hours per week or month." VILLAGE OF SHARON, DEC. NO. 27514 (WERC, 12/92), citing VILLAGE OF MAPLE BLUFF, DEC. NO. 26746 (WERC, 1/91); KENOSHA UNIFIED SCHOOL DISTRICT, DEC. NO. 11293 (WERC, 9/72). By "regularity of employment," we mean that the employment itself, not necessarily the particular hours of assignment, is regular or recurring; one can have "regularity of employment" without necessarily having standardized shifts.

It is equally well-settled that where a regular amount of work is available for part-time employees, "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 employees despite their ability to reject work." CITY OF PHILLIPS (POLICE DEPARTMENT), DEC. NO. 26151 (WERC, 12/92), citing VILLAGE OF NIAGARA, DEC. NO. 12446-A (WERC, 5/79); OZAUKEE COUNTY, DEC. NO. 22667 (WERC, 5/85). We have held that employees who work at least one eight hour shift every two week pay period work more than a *de minimis* amount on a regular basis. VILLAGE OF POYNETTE, DEC. NOS. 26744 and 26745 (WERC, 1/91).

In SHARON, *supra*, we found that two employees who were regularly scheduled one day per month and who worked one shift per pay period, with the opportunity to accept or reject further work, worked a sufficient number of hours on a regular basis to warrant being found to be regular part-time employees. In PHILLIPS, *supra*, there were more complex factors, and we found as follows: an employee who had worked as many as 724 hours annually a few years prior to the petition for election, but who had worked only 16 hours in the eight months prior to hearing, and who had declined additional offered work was casual; an employee who worked 57.5 hours in one three-month period, then a total of 34 hours in three pay periods over a nine-month period did not work with sufficient regularity to justify inclusion as a regular part-time employee; that an employee who worked 57.5 hours during six of the 11 pay periods prior to the hearing was also casual; that an employee who worked an average of about 10 hours during 11 of the 24 pay periods preceding the hearing, but only worked during three of the 15 pay periods immediately preceding the hearing, had a share of the available work not sufficient to warrant inclusion; that an employee who completed his training approximately four months prior to

hearing, worked eight hours during one pay period the following month, no hours the next month, 16 hours the following month, and no hours during the month of hearing, and was not scheduled for any shifts for the three months following hearing was also casual; that an employee who worked from 8.6 hours to 88 hours per pay period in each of the 24 pay periods preceding the hearing, but for one, was a regular part-time employe, as was an employe who worked from six hours to 72 hours during 14 of the 20 pay periods preceding the hearing, notwithstanding that each employe we found to be regular part-time also held part-time law enforcement positions with other agencies that could require them to decline work opportunities with the subject employer.

In late summer or early fall 1997, there would have been little doubt about Fitters' status as regular part-time, given the regularity and number of his work hours.

However, sometime in September 1997, the position of Chief of the Evansville Police Department became vacant which caused Fitters to assume additional hours at the expense of his commitment to Spring Green. Indeed, the record establishes that during the five pay periods prior to the November 19, 1997 hearing, Fitters worked only one ten-hour shift. Since the hearing and through March 5, 1998, Fitters has only worked one additional shift (8 1/2 hours). Under such circumstances, Fitters is no longer a regular part-time employe and is thus ineligible to vote in the election. If the eligible employes elect to be represented by the Association and Fitters' hours of work return to a level of regularity which would qualify him as a regular part-time employe, he will then properly be included in the bargaining unit.

Watrud does qualify as a regular part-time employe. She has worked each pay period since she began her employment with the Village in July, 1997. While the number of hours worked has declined since she accepted employment with the City of Monona, we are satisfied from the record that she will continue to work at least one shift per pay period and thus will perform more than a *de minimis* amount of work on a regular basis. Therefore, Watrud is eligible to vote in the election.

Accordingly, we have directed an election in which Sergeant Runice, and Officers Miller, Stephens, and Watrud are eligible to vote.

Dated at Madison, Wisconsin this 12th day of March, 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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