

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF GREEN BAY

Involving Certain Employes of

CITY OF GREEN BAY

Case 286
No. 56751
ME-956

Decision No. 29714

Appearances:

Mr. James M. Kalny, City/County Human Resources Director, 305 East Walnut Street, Room 620, Green Bay, Wisconsin, 54301, appearing on behalf of the City of Green Bay.

Parins Law Firm, S.C., by **Mr. Thomas J. Parins**, 125 South Jefferson Street, Suite 102, Green Bay, Wisconsin, 54305, appearing on behalf of the Green Bay Police Bargaining Unit.

Mr. Robert Baxter, Staff Representative, 2065 East Baraboo Circle, DePere, Wisconsin 54115, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT**

On August 20, 1998, the City of Green Bay filed a petition with the Wisconsin Employment Relations Commission seeking the clarification of a bargaining unit comprised of certain employes represented by Bay Area Municipal Employees Union Local 1889, AFSCME, AFL-CIO, by including therein the newly-created, but not yet filled, position of PC/Network Technician.

No. 29714

AFSCME Local 1889 takes no position as to the City's petition. The Green Bay Police Bargaining Union opposes the City's petition by contending that the PC/Network Technician position should be placed within its bargaining unit which consists of sworn police officers employed by the City.

Hearing was held in Green Bay, Wisconsin, on December 10, 1998, before Examiner Amedeo Greco, a member of the Commission's staff. AFSCME Local 1889 elected not to participate in the hearing or to file a post-hearing brief. The City and the Police Bargaining Union filed briefs and reply briefs that were received by March 30, 1999.

On July 30, 1999, Examiner Daniel J. Nielsen issued Findings of Fact, Conclusions of Law and Order in a complaint case involving the City and the Police Bargaining Unit. No petition for review was filed and the Examiner's decision became the Commission's decision on August 20, 1999 by operation of Sec. 111.07(5), Stats.

The Commission, having considered the matter and being fully advised in the premises, makes the following

FINDINGS OF FACT

1. Green Bay Police Bargaining Union, herein the Union, is a labor organization with its principal offices at 125 South Jefferson Street, Green Bay, Wisconsin, 54305.
2. Bay Area Municipal Employees Union Local 1889, AFSCME, AFL-CIO, herein AFSCME, is a labor organization with its principal offices at 2065 East Baraboo Circle, DePere, Wisconsin, 54115.
3. The City of Green Bay, herein the City, is a municipal employer with its principal offices at 100 North Jefferson Street, Green Bay, Wisconsin, 54301.
4. The Union for some time has represented certain employees in the City's Police Department. The Union and the City are parties to a collective bargaining agreement that states, *inter alia*:

ARTICLE 1 RECOGNITION/MANAGEMENT RIGHTS

1.01 UNIT. The City agrees to recognize the Bargaining Unit as the bargaining agent for all full-time personnel of the Police Department having powers of arrest employed by the City, excluding the rank of Chief, Assistant

Chief, Captain and Lieutenant in the matter of wages, hours, and working conditions. Prior to any negotiations, the City shall be furnished with a list of the membership of the Bargaining Unit.

1.02 UNIT JOB DUTIES. Nonsupervisory job duties shall be assigned only to members of the Bargaining Unit. Ranks excluded from the Bargaining Unit are so excluded because the primary nature of their positions is to supervise personnel of the department, and accordingly they shall not be assigned to perform nonsupervisory duties as part of their normal and usual job duties; provided that this restriction shall in no way restrict such personnel in taking any and all police action, or performing police duties and functions in relation to situations, events or circumstances encountered or observed by such officers in the course of the performance of their supervisory duties (for example, a supervisor would not work radar or patrol for traffic violators, but would be expected to apprehend or arrest traffic violators who are observed by the supervisor while performing the duties of supervision of personnel).

1.03 MANAGEMENT RIGHTS. The Union recognizes the prerogative of the City, subject to its duties to collectively bargain, to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers and authority which the City has not abridged, delegated or modified by this Agreement, are retained by the City, including the power of establishing policy to hire all employees, to determine qualifications and conditions of continued employment, to dismiss, demote, and discipline for just cause, to determine reasonable schedules of work, to establish the methods and processes by which such work is performed. The City further has the right to establish reasonable work rules, to delete positions from the Table of Organization due to lack of work, lack of funds, or any other legitimate reasons, to determine the kinds and amounts of services to be performed as pertains to City government and the number and kinds of classifications to perform such services, to change existing methods or facilities, and to determine the methods, means and personnel by which City operations are to be conducted. The City agrees that it may not exercise the above rights, prerogatives, powers or authority in any manner which alters, changes or modifies any aspect of the wages, hours or conditions of employment of the Bargaining Unit, or the terms of this agreement as administered, without first collectively bargaining the same or the effect thereof.

5. AFSCME for some time has represented certain City employees. AFSCME and the City are parties to a collective bargaining agreement that states, *inter alia*:

ARTICLE 1
RECOGNITION AND UNITS OF REPRESENTATION

(A) The Employer recognizes the Union as the exclusive representative for the purposes of conferences and negotiations with the Employer, or its lawfully authorized representatives, on questions of wages, hours, and conditions of employment for the Unit of Representation consisting of all employees of the City of Green Bay employed as follows:

(1) All regular full-time and part-time employees of the City of Green Bay employed in the City Hall and associated departments, Parking Utility and Transit Department, but excluding registered nurses, sanitarians, engineers, transit drivers, transit mechanics, department heads, elected and appointed officials, supervisors, confidential employees and all other employees of the Municipal Employer.

...

6. Ron Shaha, a sworn police officer, occupied the position of Specialist II within the City of Green Bay Police Department for about three years before he retired in March, 1998, during which time he was in the collective bargaining unit represented by the Union. His job description stated:

GREEN BAY POLICE DEPARTMENT
Communications Division

I. TITLE

Specialist, Technical Coordinator for the Communication Division

II. REPORTING RELATIONSHIP

The Communication Specialist will be directly responsible to the Director of the Communications Division and, through the chain of command, to the Deputy Chief of Administration.

III. BASIC FUNCTIONS

A. To report to the Director of Communications in the matters of supervision and discipline of Communications' personnel as it relates to Department policies and procedures.

- B. To insure all communication and electronic systems are properly maintained so that they are operational for normal and emergency use at all times to include but not limited to radio, computer, telephones and all supporting equipment.
- C. To be the technical coordinator and act as the project manager on the various requests that come to the division for automation.
- D. To act as liaison for the Division between the street officers, the CCOs, and other Department personnel, to see their requests are coordinated to insure that the automated systems in place serve the needs and measure up to the expectations of all active users for functionality and easy use.
- E. To investigate and identify which automated systems can best meet the law enforcement function, but maintain the required standards and codes set forth to comply with open records, investigative and criminal procedures, making sure rules of evidence, arrest, search and seizure, and the rights of the individual are not violated.
- F. Acts as liaison for the Green Bay Police Department's Communication Division to the Information Services Department. Works with the Information Services Department as appropriate in computer related matters.

IV. DUTIES AND RESPONSIBILITIES

- A. Performs preventive maintenance and minor routine or emergency repairs, or acts as the Department liaison between the city and its contractors for all equipment under his/her control. This equipment includes, but is not limited to, radios, computers, telephones, radar units, pagers, audio tape recorders, duplicating equipment, building public address system, and vehicle fleet maintenance, i.e. all radio and computer systems in the fleet.
- B. Assists all divisions in the Department with research, development and implementation of any automated systems.

- C. Assists with the preparation of the annual budget for all equipment under his/her control. Makes recommendations to the administration for new equipment and be able to work with other city departments in drawing up bid specifications.
- D. Recommends training for officers and civilian employees as it pertains to all facets of the Communications Division to cover law updates and police procedures for the Department's computer, radio and telephone systems.
- E. Monitors and assists in evaluating CCO job performance.
- F. Monitors and advises the Division Commander when CCOs need to be recertified in order to comply with existing standards, i.e. EMD, CPR, TTY.
- G. Assists in developing and updating all Division SOPs and guidelines for CCO's operation in the 911 Communication Center.
- H. Acts as instructor during department training programs for new employees, roll call and in-service training programs covering all areas of his/her responsibility.
- I. Perform all other duties that may be assigned by his/her supervisors.
- J. Assumes the duties and responsibilities of the Director of Communications in his absence.

V. KNOWLEDGE, SKILLS, AND ABILITIES

- A. To be acquainted with and recognize complaints of all violations of ordinances of the City of Green Bay, and misdemeanors and felonies against the persons and the State of Wisconsin and the United States.
- B. To be completely familiar with the Rules and Regulations relative to criminal procedures of arrest, search and seizure, and the rights of individuals under investigation for any matter.

- C. To be familiar with allied agencies of the city, state, or federal government, for proper referral of matters in all local jurisdictions of department responsibility.
- D. To be familiar with technical aids and general use of such aids in application to investigate activities.
- E. To be familiar with general investigative procedures, sources or information and proper method of reporting same and of following same through correct remedial steps, such as courts or commissions basically assigned to handle these matters.
- F. Knowledge of department main frame computer hardware and software operations (beyond the end-user level) sufficient to provide the ability to troubleshoot and resolve problems, system failures, etc. In depth knowledge of CAD system.
- G. Knowledge of Department radio and telephone systems (beyond end-user level) sufficient to provide the ability to troubleshoot, resolve and/or correct problems of moderate difficulty. Knowledge of the role of the trunk radio system in major emergency response including talk groups, etc. Knowledge of the theory and practice of radio transmission and reception; radio transmitting and receiving equipment; radio installation, maintenance, testing and operations; and Federal Communications Commission's rules and regulations governing transmitting and receiving equipment as it pertains to public safety usage.
- H. Knowledge of personal computers, printers, modems, mobile data terminals, and other police department electronics (beyond the end-user level) sufficient to troubleshoot, resolve and/or correct problems of moderate difficulty.
- I. Ability to work from blueprints, schematic diagrams, technical manuals, etc. Ability to work with parts, equipment, tools, etc. common to the electronic communication and computing fields. Ability to maintain accurate and complete files on personnel and equipment.

VI. MINIMUM QUALIFICATIONS

- A. Post-secondary education in computer science, electronics, broadcast communications, or related field highly desirable.
- B. Be certified as a law enforcement officer by the Wisconsin Law Enforcement Training and Standard's Board.
- C. At least five years experience as a police officer and able to qualify through the Department promotional procedures.
- D. Valid driver's license and good driving record.
- E. Sufficient oral communication skills to represent the division at budget hearings, in public, and staff meetings, etc.
- F. Sufficient written communication skills to maintain department inventories, staff study research projects, management progress reports, preventive maintenance schedules, and issue memorandums as directed.
- G. Must possess or be able to obtain any training and/or certifications required to perform the duties in this area of specialization.

VII. APPOINTMENT AND REMOVAL

- A. Subject to the regular rules and contractual agreements of the Green Bay Police Department as well as the laws of the State of Wisconsin.

7. The City at the time of Shaha's retirement decided to not fill his vacant Specialist II position and to instead replace it with a PC/Network Technician position. The job description for the PC/Network Technician states:

I. IDENTIFICATION

Position/Title: PC/NETWORK TECHNICIAN
Dept/Division: Information Services
Reports To: Information Services Director

Supervises: None
Job Summary: Under general supervision, provides technical support for the City's data communications network.

II. ESSENTIAL FUNCTIONS

Responsible for installation and setup of new personal computers, peripherals (printers, plotters, speakers, etc.), phone system equipment and network equipment (hubs, routers, wiring, etc.). Repair and upgrade existing equipment including personal computers, peripherals, network equipment, phones and related wiring, board and disk upgrades, and memory changes. Respond to and resolve problem calls, including Help Desk requests. Perform problem determination, coordination of service calls with vendors and transportation of equipment. Install and configure operating systems and application software. Complete documentation necessary for administrative functions of the department, including time reporting, problem logs, etc. Train City employees in software and equipment use. Perform routine/preventative maintenance on PC's and printers (scan disk, defrag, etc.) on a regularly scheduled basis. Perform fixed asset tracking. Related functions as assigned.

III. KNOWLEDGE, SKILLS AND ABILITIES

Considerable knowledge of PC and network technology. Knowledge of computer-based telephone systems. Ability to work well with department personnel and customers. Ability to work independently and as a team member. Ability to identify and resolve PC and network support problems. Ability to effectively communicate, both verbally and in writing.

May be required to demonstrate minimum competency by successfully passing approved tests.

IV. MINIMUM EDUCATION AND EXPERIENCE REQUIRED

1. Associate degree in Microcomputers, Network Support, Computer Science or related field.
2. One to three years technical support-related experience.
3. Valid driver's license and good driving record.

A combination of equivalent experience and/or education may be considered.

V. PHYSICAL REQUIREMENTS

Ability to perform the following activities:

- Lifting up to 70 pounds.
- Carrying up to 50 pounds.
- Frequent standing, walking, sitting and crawling.
- Ability to focus for long periods of time on projects.
- Ability to use fine hand tools.

The above is not to be construed as an exhaustive statement of duties, responsibilities or requirements.

At the time of Shaha's retirement, the City already had one employe in the PC/Network Technician classification who is employed in the City's Information Services Department which is located in City Hall. The incumbent in that position has an Associate Degree in Electronics and about 14.5 years of experience installing, setting up, maintaining, and repairing personal computers. That PC/Network Technician position was first proposed by Senior Personnel Analyst Katey Bouressa in a memorandum dated August 8, 1997, to the City's Assistant Human Resources Director Kathryn Koehler which stated:

RE: Reclassification of Programmer/Analyst to PC/Network Technician

- I. Request by Information Services Director, Tony Keuler to study the vacant Programme Programmer/Analyst position.
- II. Research Completed.
 - A. Discussion with Information Services Director, Tony Keuler
 - B. Discussion with entire Information Services Department staff to review workload and current staffing levels.
 - C. Discussion with Karin Green, Brown County Personnel Analyst
 - D. Review of Government Information Processing Association of Wisconsin, 1997 Survey results

III. Discussion

In November, 1996, Information Services Director Tony Keuler, received authorization to fill a Programmer/Analyst position vacant due to a resignation. Since that time, two recruitments have proven unsuccessful in finding an interested and qualified candidate who could meet the department's current needs. As a result, a study was initiated to review the entire department.

Currently, the Information Services Department table of organization includes:

- 1 Information Services Director
- 4.7 Programmer/Analysts (4 full time and 1 part-time)
- .5 Data Processing Clerk (part-time)

The work in the department has traditionally been divided into specialties by department. For example, one Programmer/Analyst handles the accounts payable and receivable and general ledger, one handles payroll, Parking Utility and Water Utility, one handles network functions, and one handles Police, Fire and Municipal Court. The Data Processing Clerk is responsible for running a variety of mainframe jobs (invoicing, monthly reports, etc.) and performing backup operations on all computer-based operations.

All employees in the department currently assist to some extent, with PC installation and upgrades, software upgrades and Help Desk activities. The work is consuming anywhere from 15% to 75% of each staff member's time since the introduction of a client-server based network environment. This is causing a backlog in programming/software development projects, and network debugging and improvements.

In 1992, the City owned approximately 20 personal computers. Today, the Information Services Department services approximately 180 PC's/Work Stations, 100 printers, 40 modems, and a number of multiplexers, bridges, line drivers and hubs. With the increase in use of and complexity of computers, there is a direct correlation to the number of problems incurred by users. These problems are based on human error, equipment failure and system quirks and human error.

City employees experiencing problems with their computer equipment either call the Information Services Department directly or send a Help Desk service request. As computers are now critical to the efficient and effective operations

of all City departments, the majority of requests are considered urgent, not on a "when there is time" basis. Currently, Programmer/Analysts must put aside their regularly assigned projects to assist with Help Desk requests.

With the increase in peripheral equipment (printers, scanners, etc.) there is also an increase in breakdowns, repairs and general maintenance. The work also is currently performed by Programmer/Analysts (or contracted out when considered more than routine). There is not adequate staff time or training to implement a preventative maintenance program on computer equipment which could reduce these unexpected daily breakdowns.

One factor that has allowed the Information Services Department to at least minimally meet the PC/Network support requirements, is the mature state of our mainframe based systems. The demand for program writing and system improvements is significantly reduced when a program is installed and running for several years, as all City programs are.

However, during the next year, the following software programs will be installed at the City, requiring extensive staff time from each of the four Programmer/Analysts currently working:

- * New World – the software which will create a county-wide dispatching and Police Records system.
- * Time and Attendance – The payroll program which will automate time clock/time sheet data collection and entry.
- * Finance upgrade – new software that will increase and improve recordkeeping capabilities in accounts payable and receivable, general ledger and budgeting.
- * WAN – A Wide Area Network will be installed to include all outlying City departments on the existing network.

At the same time that this increase in Programmer/Analyst work is occurring, up to an additional 20 workstations plus required peripheral equipment will be needed to be installed and maintained. At some point in time, Bay Beach, the Wildlife Sanctuary, Park Shop and Mason Manor will also be connected to the network.

As mentioned earlier, there have been two unsuccessful recruitments this year alone. We have been trying to find a candidate qualified to be a Programmer/Analyst with sufficient PC/Network support education and experience in order to meet the increasing work demands in this area. The City, as well as the County, have been unsuccessful in 1997.

Technological and workload changes seem to justify a change in the Information Services Department table of organization. Attached is a job description for a new PC/Network Technician position which would replace the vacant Programmer/Analyst position in the table of organization. Also attached is a job description for Programmer/Analyst to clarify the differences in duties.

The PC/Network Technician would provide technical support for the City's data communications network. This would include installing and setting up new PC's and related peripheral equipment, repairing and upgrading equipment, responding to and resolving Help Desk requests, performing routine/preventative maintenance and train employees in software and equipment use. This position would allow significantly more time for Programmer/Analysts to perform actual software development and programming duties.

The wage rate for this position will have to be negotiated but should be significantly less than the \$18.74 for a Programmer/Analyst.

IV. Recommendation

I recommend that the vacant Programmer/Analyst position be reclassified as a PC/Network Technician. I also recommend that the Information Services Director be given approval to fill the PC/Network Technician position and any subsequent vacancies.

V. Fiscal Impact

As explained above, the wage rate is unknown at this time and an accurate calculation is not possible. However, the wage rate is expected to be lower than that of Programmer/Analyst resulting in a savings in both wages and benefits.

8. The City ultimately agreed to create another P/C Network Technician position for the Police Department and to place it in the AFSCME-represented bargaining unit described above in Finding of Fact 5. That PC/Network Technician position now earns about \$15.80-\$15.93 an hour and is referenced in the wage section of AFSCME's contract with the City. That Technician is part of the City's Information Services Department which is responsible for providing computer and other information services throughout the City's various departments, including the Police Department.

9. After Shaha retired in March, 1998, City Assistant Human Resources Director Koehler by memorandum dated April 22, 1998, informed the City's Personnel Committee:

RE: Request of Police Chief to eliminate position of Specialist II and create and fill the position of PC/Network Technician

On March 12, 1998, Katey Bouressa met with Specialist II Ron Shaha to discuss his position prior to his retirement on March 19, 1998.

Specific concerns had been raised in the past by Information Services Department personnel, Captain Mike Mason, and Fire Department personnel. Concerns included whether or not a sworn officer was necessary to fill the position, and whether or not the position should remain a Police Department employee.

In discussing a typical work day in his current position, Specialist II Shaha outlined the following percentages as to how his routine was structured:

- * PC Support (90%)
 - Rebuild and Maintain Equipment (30%)
 - Respond to End User Questions and Concerns (50%)
 - Load Software/Upgrade (10%)
- * Radios (10%)

Captain Mike Mason, the individual responsible for supervising this position, has indicated that there are duties that should be added to the position that are not included in the current job description. Those duties include:

- * Monitoring and administration of the radio system including the addition and programming of new radios.
- * Conducting recertification Time System training to all officers, perform Time System program upgrades and keep staff abreast of Time System changes and enhancements.
- * Trouble shooting and routine administration of message switch and Mobile Data Terminals.
- * Assisting in identifying user needs for NewWorld software application.
- * Providing staff training on PC Software applications.
- * Participating as a member of MTUG (Mobile Technical User Group), WISLEIN (Wisconsin Law Enforcement Intelligence Network, etc.

In summary, the essential functions of the position would be installation and set up of new personal computers, peripherals, phone system equipment and network equipment; responding to and resolving problem calls including help desk requests; training City employees in software and equipment use; performing routine and preventative maintenance on PC's and printers and as an overall job summary, is responsible for providing technical support for the City's data communications network including computers, radios, telephones, etc.

The Police Department is a 24 hour operation with approximately 60 concurrent users engaged in a sensitive function. Technical support for this operation is clearly needed.

The position as defined, however, most closely matches our classification of a PC/Network Technician, rather than that of a sworn police officer, and my recommendation would be to fill it at that level (a copy of that job description is attached). The next issue then becomes, which department is the position most appropriately assigned to.

Argument could be made for assignment to the Information Services Department due to the position's classification and the fact that the entire City is linked by one network. Work performed on the network at any point can potentially impact the entire network. Control by Information Services vis a vis setting of parameters for what the position can and cannot do is essential.

Argument can also be made to keep the position in the Police Department table of organization. Much of the work that needs to be performed is peculiar to the Police Department (Time System Radio System, Mobile Data Terminals, NewWorld, etc.) and it is critical that the position be physically located at the Police Department. To have a position located full time in one department, but reporting to another department, especially one that is physically remote, presents supervisory problems, especially in regard to control and direction and the like.

Considering all factors, it is appropriate to keep the position in the Police Department table of organization with the understanding that the Information Services Department establishes the parameters of what function the position is allowed to perform.

Filling the position as a PC/Network Technician has the following financial impact:

| | Wage | Hours/ Year | Annual Wage | Cost of Benefits | Cost |
|--------------------------------|------------------------|----------------|------------------|---------------------|-----------------|
| Specialist II | \$23.70 (1998 wage) | 1965.6 | \$46,584 \$8,633 | (40%) | \$65,217 |
| PC Tech. | \$15.34 (1997 wage) | 1950 | \$29,913 \$8,973 | (30%) | \$38,886 |
| Total Estimated Savings | | | | | \$26,331 |

(Note: 1998 wages are not available for the PC Network Technician as that contract has not been settled. Therefore, total estimated savings may be reduced by approximately \$1000 to \$2000)

RECOMMENDATION:

I recommend that the Police Department table of organization be amended by deleting the position of Specialist II and adding the position of PC/Network Technician and further, that authorization be given to fill the position.

10. The City has not yet filled the PC/Network Technician position assigned to the Police Department because of this pending unit clarification petition.

11. The City has discussed with the Union placing the PC/Network Technician in the Union's bargaining unit, at which time Union representatives told the City it would have to train the most senior bargaining unit applicant who applied for the position, a training process Koehler testified without contradiction could take up to three years. City Human Resources Director James M. Kalny by letter dated May 1, 1998, informed the Union's attorney, Thomas J. Parins:

...

Re: Green Bay Police Bargaining Unit – Specialist II/Computers

Dear Mr. Parins:

I am in receipt of your letter dated April 27, 1998, and want to make certain that there is no misunderstanding regarding the City of Green Bay's intent in this matter and our intended process at this point.

In our telephone conversation of April 23, 1998, we reviewed the content of the April 22, 1998 letter and I explained to you that the City was intent on beginning to fill this position and was looking for authorization from the Personnel Committee to do so. You informed me that while you could not commit the bargaining unit without conferring with them, you did not anticipate that there would be a great deal of objection to removing this position from the bargaining unit. You went on to explain that the bargaining unit recognizes that there is a need for computer expertise in performing the duties to be provided by the position described in the April 22, 1998 letter.

Accordingly, the City is proceeding to fill this position to meet this vital need as soon as possible. We do not feel, and I think you would agree, that this is the type of position that we should leave vacant for a considerable period of time, nor is it the type of position that should be filled with an individual that is not trained to perform all of the functions that will be required.

It is not the purpose of this letter to set forth the rationale for our recommendation to the Personnel Committee nor any arguments in support of it. It is only to let you know that we will be acting on the request, as presented, so that if you have any response to us, you can formulate it and get it to us in a manner that you would deem timely.

If you have any questions concerning this correspondence, or the City's intent or procedure regarding this matter, please contact me at 448-4070.

...

12. Attorney Parins, by letter dated May 5, 1998, informed Kalny:

...

Dear Mr. Kalny:

I read with some surprise your letter of May 1, 1998. You apparently intend to delete a position from our Bargaining Unit without first collectively bargaining.

This kind of action is in direct violation with Section 1.03 of the labor contract. The City has expressly agreed that it would not take this kind of action without first collectively bargaining.

This is to advise that the Bargaining Unit would view a unilateral action of the kind anticipated to be in direct confrontation of its legal and contractual rights to bargain. The Bargaining Unit would deem this both as a refusal to bargain and a violation of the labor contract.

I am also personally taken aback in that you would take my offhand comments regarding this matter and attempt to construe them as agreement to going ahead with the change. I made it extremely clear to you in our telephone conversation of April 23, 1998, that not only did I have no authority to speak for the Bargaining Unit, I could not predict what their position might be. My comments to you were strictly to the effect that I know that there had been comments in the past regarding lack of computer expertise. I also made it very clear that my comments were nonspecific and did not relate to any particular position.

In our telephone conversation, I was under the impression that the City was merely transmitting notice and information as a prelude to collective bargaining. It was fully expected that collective bargaining would take place regarding this matter. In fact, I was very clear in explaining that I would appreciate documentation indicating what specific position you were talking about, and what changes you contemplated. I stated that I would pass this information on to the Bargaining Committee immediately (which I have), and the Bargaining Committee would determine its bargaining stance in this matter.

As to the statements in your letter to the effect that there is a "vital" need for the change, we could not disagree more. If there is any deficiencies regarding the lack of computer expertise in the Specialist II position in issue, it is a situation which has been in existence for a number of years, and indeed was in existence at the time that the present labor contract was negotiated and implemented. There has been no occurrence or occasion that would make any change at this particular moment in time "vital" to the operations of the department. This is especially true as to taking away all of the duties of a member of our unit. If there is any dire need for computer expertise, the City possesses this expertise to lend to its police department pending collective bargaining.

In short, there is no emergency situation which would in any way temper your firm legal and contractual duties to the Bargaining Unit.

...

13. There are significant differences between the disputed PC/Network Technician position slotted for the Police Department and the Specialist II position occupied by Shaha. The occupant in the former position does not need to be certified by the Wisconsin Enforcement Board; he/she does not need any prior experience as a police officer; he/she does not need the power of arrest; and he/she does not need to perform any supervisory responsibilities. In addition, the occupant of the P/C Network Technician position must possess far greater computer skills than the Specialist II and he/she must be able to rebuild and maintain equipment; load software; configure software; upgrade machines; respond to end user questions and concerns; program radios; and train others in the use of personal computers. He/she must also be able to operate a new dispatch system, an AS/400 mainframe computer system, and a Wide-Area Network System.

14. The PC/Network Technician assigned to the Police Department is scheduled to work 8:00 a.m. – 4:30 p.m., for a total of 37 ½ hours a week, Monday through Friday, and he/she will share an office with a Computer Analyst who is in the AFSCME bargaining unit. A Communications Assistant, who is in the AFSCME bargaining unit, will work next door. If the PC/Network Technician is temporarily absent, he/she will be replaced by the other PC/Network Technician who is in the AFSCME bargaining unit. The disputed PC/Network Technician would report to Communications Assistant Mike Mason who is a Captain in the Police Department and who supervises both law enforcement employees and civilian employees.

15. AFSCME already represents a Communications Assistant, a Programmer Analyst, and numerous custodians and mechanics who work in the Police Department. AFSCME also represents a total of six technical positions in various City departments: three Programmer/Analysts, a PC/Network Technician, a Data Entry Clerk, and a Communications Assistant.

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

CONCLUSIONS OF LAW

1. Because the PC/Network Technician is not required to have the power of arrest, inclusion in the sworn employe bargaining unit represented by the Union is not appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. Because the PC/Network Technician has a substantial community of interest with the bargaining unit employees represented by AFSCME, inclusion in the AFSCME bargaining unit is appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The AFSCME bargaining unit described in Finding of Fact 5 is hereby clarified to include the position of PC/Network Technician that is to be assigned to the Police Department.

Given under our hands and seal at Madison, Wisconsin this 7th day of September, 1999.

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

CITY OF GREEN BAY (POLICE)

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

POSITIONS OF THE PARTIES

The Union asserts that the disputed PC/Network Technician slated for the Police Department is no different from the former Specialist II position vacated by Officer Shaha and that it thus “meets all of the requirements for inclusion. . .” in its bargaining unit. It also contends there is no “basis or reason for the WERC to take any action in regards to the PC Technician position” because it has not yet been filled; that “Unit clarification proceedings are inappropriate to seek a ruling on whether ‘unit work’ or ‘unit position’ should be removed from a collective bargaining unit”; and that the Commission should address certain “Prehearing Matters” relating to the Hearing Examiner’s comments to Attorney Parins.

The Union adds that unit clarification proceedings are an “inappropriate” means to determine “duty to bargain issues which are already at issue in a pending prohibited practice proceeding”; that a municipal employer’s right to unilaterally create or eliminate positions does not negate its bargaining obligations; that an employer’s right to “establish job descriptions or minimum qualifications is not at issue in this case”; that a qualified member of its bargaining unit “continues to be the best candidate to fill the position in issue”; that its contract with the City precludes the City from “unilaterally removing the Specialist II duties from the bargaining unit. . .”; and that there exists “no legitimate technical PC technician position for this unit clarification proceedings to consider”.

The City, in turn, maintains that it has the right to establish the qualifications of “the job it needed and to delete a position from the police table of organization because it was no longer required”; that the new PC/Network Technician position does not fall within “the scope or contemplation of the police bargaining unit contract”; that said position “has a virtually identical community of interest with the AFSCME PC/Network Technician and other AFSCME police department civilians”; and that its decision here “is a sound exercise in managerial discretion.”

The City also asserts there is no merit to the Union’s claim that the PC/Network Technician will perform the same duties as the former Specialist II; that “abundant evidence” supports its decision to place the PC/Network Technician position in the AFSCME bargaining unit; that unit clarification proceedings are “clearly appropriate” to resolve these kinds of disputes and that the Union waived its right to object to its unit clarification petition; and that the Union’s “assertion in the ‘Prehearing Matters’ section of its brief is wholly inappropriate.”

DISCUSSION

Pursuant to the Commission's long-standing policy, we find that the P/C Network Technician position cannot be placed in the sworn Union bargaining unit described above in Finding of Fact 4 because the incumbent in said position will not be required to have the power to arrest. See for example MARATHON COUNTY, DEC. NO. 21815-A (WERC, 9/94), wherein we ruled:

It is well settled that the Commission rejects any co-mingling of positions with and without the power of arrest in the same bargaining unit.

Id., at 16.

We are further satisfied that the PC/Network Technician shares a substantial community of interest with the employees represented by AFSCME. He/she will share an office with a Computer Analyst who is in the AFSCME bargaining unit and who performs similar computer-related work and he/she will work next door to a Communications Assistant who also is in the AFSCME bargaining unit, thereby joining the roughly 30 or so other civilian employees of the AFSCME bargaining unit who work in the Police Department. Moreover, the PC/Network Technician will work a standard Monday-Friday work week with a fixed 8:00 a.m. – 4:30 p.m. shift, unlike many members of the Union's bargaining unit who work various shifts, including nights, weekends and holidays. Most importantly, the disputed position has substantially the same duties and skills as the other PC/Network Technician who works in the Information Services Department and who is already in AFSCME's bargaining unit.

Accordingly, because the P/C Network Technician slated for the Police Department shares a substantial community of interest with the employees represented by AFSCME; because we will not include sworn and non-sworn positions in the same unit; and because even the recognition clause in the Union's own contract with the City limits the Union's jurisdiction to those Police Department employees who have the "powers of arrest", we conclude that said position should be placed in AFSCME's bargaining unit.

We find without merit the Union's claim that the Commission should not rule on the City's petition because of the holdings in SHAWANO COUNTY (MAPLE LANE HEALTH CARE CENTER), DEC. NO. 22382 (WERC, 2/85); CITY OF BROOKFIELD, DEC. NO. 21808 (WERC, 6/84); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 20093-A (WERC, 8/83); TOMAHAWK PUBLIC SCHOOLS, DEC. NO. 12483-A (5/74).

In SHAWANO, SUPRA, the Commission ruled that the employer could not attack the validity of a union's certification – which it had tacitly agreed to earlier – by belatedly trying to include licensed practical nurses within a bargaining unit that consisted of registered nurses. The Commission held that it: “does not consider the unit clarification procedure a proper means of securing a combination of two existing units into one confirmed unit.” *Id.*, at 5. Our holding there is inapposite here since there is no attempt in this proceeding to combine two units into one.

CITY OF BROOKFIELD, SUPRA, and MILWAUKEE BOARD OF SCHOOL DIRECTORS, SUPRA, involve duty to bargain issues. The duty to bargain issues between the Union and the City have been separately litigated and decided in CITY OF GREEN BAY, DEC. NO. 29469-A (Nielsen, 7/99), AFF'D. BY OPERATION OF LAW, DEC. NO. 29469-B (WERC, 8/99) in a manner which is consistent with a resolution of the merits of this case.

The Union cites TOMAHAWK, SUPRA, for the proposition that it is inappropriate to use a unit clarification petition to exclude a position from a unit unless continued exclusion is contrary to the Municipal Employment Relations Act. As reflected in our Findings, the P/C Network Technician is substantially different from the former Specialist II position. Thus, we do not accept the factual premise of this Union argument. Further, as noted earlier herein, we have held that it is inappropriate as a matter of law to mingle sworn and non-sworn employees in the same unit. Thus, we reject this Union argument as well.

The Union also cites EAU CLAIRE COUNTY, DEC. NO. 29305 (WERC, 2/98), and ROCK COUNTY, DEC. NO. 28494-A (WERC, 1/96), in support of its additional claim that the City is precluded from removing bargaining unit work without first bargaining over that removal. As previously noted, the duty to bargain issues have been litigated and decided in CITY OF GREEN BAY, DEC. NOS. 29469-A, B.

Lastly, we turn to the Union's concerns regarding the Examiner's conduct vis-a-vis Attorney Parins. In response, based on our review of the record, we are satisfied all parties received a full and fair opportunity to present evidence and argument. We further point out

that we are the decision makers in this case and we base our decision on the evidence and argument produced by that opportunity.

Dated at Madison, Wisconsin this 7th day of September, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

B. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

