

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of
BAY AREA MUNICIPAL EMPLOYEES UNION, LOCAL 1889, AFSCME, AFL-CIO
and
WISCONSIN PROFESSIONAL POLICE ASSOCIATION
and
TEAMSTERS LOCAL 75

Involving Certain Employees of

BROWN COUNTY

Case 644
No. 58895
ME-3770

Decision No. 30036

Appearances:

Mr. David A. Campshure, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1566 Lynwood Lane, Green Bay, WI 54311-6051, appearing on behalf of Bay Area Municipal Employees Union, Local 1889, AFSCME, AFL-CIO.

Cullen, Weston, Pines & Bach, by **Attorney Gordon E. McQuillen**, 122 West Washington Avenue, Suite 900, Madison, WI 53703, appearing on behalf of the Wisconsin Professional Police Association.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorneys Scott D. Soldon and Nathan D. Eisenberg**, 1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, WI 53212, appearing on behalf of Teamsters Local 75.

**FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER CLARIFYING
BARGAINING UNIT AND DISMISSING PETITIONS FOR ELECTION**

On May 16, 2000, Bay Area Municipal Employees Union, Local 1889, AFSCME, AFL-CIO, filed a petition for election with the Wisconsin Employment Relations Commission.

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The petition stated that a question concerning representation had arisen because Brown County had created a Public Safety Communications Department to consolidate existing public safety telecommunications operations of Brown County, the City of Green Bay and the City of De Pere. The petition requested an election among all regular full-time and regular part-time employees of the Brown County Public Safety Communications Department excluding law enforcement personnel with the power of arrest and all supervisory, managerial and confidential personnel.

On May 17, 2000, the Wisconsin Professional Police Association (WPPA) filed a petition for election with the Commission in the Brown County Public Safety Communications Department among the same employees referenced in the AFSCME election petition.

On May 25, 2000, Teamsters Local 75 filed a position statement with the Commission seeking dismissal of the petitions filed by AFSCME and WPPA as untimely filed, or alternatively, the addition of the about to be hired telecommunicators to the Teamsters' Courthouse bargaining unit that already includes existing Brown County telecommunicators. On October 3, 2000, the Teamsters filed a unit clarification petition formally seeking to include all telecommunicators of the Brown County Public Safety Communications Department in a Teamsters bargaining unit of Brown County Courthouse employees.

Brown County took no position as to the merits of the various petitions.

Examiner Karen J. Mawhinney, a member of the Commission's staff, held a hearing in Green Bay, Wisconsin, on October 4, 2000. The parties submitted briefs and reply briefs, the last of which were received on December 2, 2000.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Brown County, herein the County, is a municipal employer with its offices at 305 East Walnut Street, P.O. Box 23400, Green Bay, WI 54305-3600. The County currently has 21 bargaining units consisting of 1,323 employees. The units range in size from 4 to 270 employees.

2. Bay Area Municipal Employees Union, Local 1889, AFSCME, AFL-CIO, herein AFSCME, is a labor organization with its offices at 1566 Lynwood Lane, Green Bay, WI 54311-6051. AFSCME is the collective bargaining representative of a City of Green Bay employee bargaining unit that includes 24 civilian communications employees.

3. Wisconsin Professional Police Association, herein WPPA, is a labor organization with its offices at 340 Coyier Lane, Madison, WI 53713. WPPA is the collective bargaining representative of a City of De Pere employee bargaining unit that consists entirely of the City's 5 civilian communications employees.

4. Teamsters Local 75, herein Teamsters, is a labor organization with its offices at 1546 Main Street, Green Bay, WI 54302. Teamsters are the collective bargaining representative of a Brown County employee bargaining unit which includes the County's 15 civilian communications employees. County civilian communications employees have been included in this Teamsters unit since 1978.

The 240 employees in this Teamsters unit work at 13 different sites.

5. In November, 1999, Brown County, the City of Green Bay and the City of De Pere entered into a five-year intergovernmental agreement to provide emergency communication and dispatch services from a central source—a newly created Brown County Public Safety Communications Department. Pursuant to the agreement, the civilian communications employees of the City of Green Bay and the City of De Pere will become County employees on or about January 1, 2001, and work side by side with the existing County telecommunicators.

6. The Public Safety Communications Department will employ approximately 45 civilian communications employees who will have the job title of Telecommunicator.

7. The Telecommunicators will initially be supervised by sworn personnel from the County Sheriff's Department and then supervised long-term by Public Safety Communications Department supervisors. No other County employees will be supervised by the Public Safety Communications Department supervisors.

8. The Telecommunicators will have a workplace which is not shared by other County employees.

9. The Telecommunicators have duties and skills which are generally not shared by other County employees.

10. The Telecommunicators provide services seven days a week and 24 hours a day. Certain County cooks are the only other civilian County employees who have this work schedule. The Telecommunicators' work schedule creates unique hour and conditions of employment issues. The existing collective bargaining agreement between Teamsters and the County thus contains several memorandum of understanding regarding hours, overtime, vacation, holidays, shift selection and call-in procedures that apply only to Telecommunicators.

11. Telecommunicators and other County employees share a common purpose of providing emergency services to citizens.

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

CONCLUSION OF LAW

A separate bargaining unit consisting of the Telecommunicators employed by the Brown County Public Safety Communications Department is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

**ORDER CLARIFYING BARGAINING UNIT AND DISMISSING
PETITIONS FOR ELECTION**

1. The Telecommunicators in the Brown County Public Safety Communications Department are hereby included in the Teamsters bargaining unit referenced in Finding of Fact 4.
2. The petitions for election filed by AFSCME and WPPA are hereby dismissed.

Given under our hands and seal, in the City of Madison, Wisconsin, this 17th day of January, 2001.

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

BROWN COUNTY

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING
UNIT AND DISMISSING PETITIONS FOR ELECTION**

The Teamsters seek to have the Telecommunicators coming from City of Green Bay and City of De Pere clarified into its Courthouse unit that already includes Telecommunicators employed by the County. Both ASCME and WPPA seek to represent a new bargaining unit of all Telecommunicators employed by the newly created Public Safety Communications Department. The County has taken no position in this matter.

THE PARTIES' POSITIONS

AFSCME

AFSCME submits that a collective bargaining unit consisting of Telecommunicators is an appropriate unit under the Municipal Employment Relations Act, and asserts such a unit will not create undue fragmentation where the County already has 21 bargaining units that range in size from 4 to 270 employees. AFSCME states that the Telecommunicators do not share a community of interest with other Teamster unit employees. Their duties and skills are distinct, their hours and working conditions differ and their supervisors and workplace will be separate from other Teamster represented employees.

AFSCME further argues that the new Public Safety Communications Department does not fall within the scope of the existing Courthouse bargaining unit represented by the Teamsters. The 1973 Commission certification of the Courthouse unit describes the unit in terms of County locations or buildings. The Communications Department will be housed in a City of Green Bay building not listed in the certification.

Historically, the County has voluntarily created new bargaining units which allow employees to bargain over their unique interests. The County and Teamsters recently removed Corrections Officers from the Courthouse unit and created such a new unit. Further, Teamsters and County have negotiated separate contract provisions for Telecommunicators for hours of work, overtime, vacations, holidays, job transfers, training and shift selection. These separate contract provisions support the appropriateness of a separate Telecommunicators unit.

WPPA

WPPA argues that the creation of a separate unit of Telecommunicators in the County is appropriate and will not offend the anti-fragmentation provisions of Sec. 111.70(4)(d)2.a., Stats. In Brown County, "the fragmentation train left the station years ago." There already are 21 County bargaining units. AFSCME represents two units of registered nurses. There

are 1,323 employees in 21 units for an average unit size of 63 employees. The Communications Department will have at least 44 positions eligible for representation for collective bargaining. Teamsters and the County recently created a new separate unit of Corrections Officers. Thus, WPPA asserts creation of one more unit does not run contrary to Sec. 111.70(4)(d)2.a., Stats.

WPPA submits that there is little community of interest shared by Telecommunicators with other Teamster unit Courthouse employees. However, Telecommunicators have distinct community of interest of their own. The Telecommunicators will be housed away from the Courthouse and no other County employees will work in the same structure. Their job duties are distinct, they will work in a secure environment and they will have supervisors that are unique to their positions.

WPPA notes that the agreement between the municipalities involved has a five-year duration, after which each one can withdraw on an annual basis. Thus, in future negotiations, WPPA asserts it will be important that the Telecommunicators be able to speak with one voice on issues that affect their continued employment with the County.

WPPA urges that the practice of the parties voluntarily accreting positions into the Courthouse unit should be disregarded. Accepting those voluntary accretions as relevant would encourage the parties to subjugate the rights of employees to be free to select their own bargaining representative. The fact that it would be convenient for the County and the Teamsters to accrete the Telecommunicators into the Courthouse unit is no justification for overlooking the representational rights of the new employees who are being added to the existing complement of Telecommunicators.

Teamsters

Teamsters argue that WPPA and AFSCME ignore the suitability of clarifying the Telecommunicators newly hired by the County into the Teamsters' existing bargaining unit. Only if it is inappropriate to clarify the new employees into the existing unit does the Commission need to evaluate whether a separate bargaining unit of Telecommunicators would be appropriate.

Clarification into the Courthouse unit is appropriate based on the Commission's decision in DANE COUNTY, DEC. NOS. 17278-A and 25002 (WERC, 11/87). The facts and arguments in that case are identical to this case and the merger of the telecommunications departments in that decision was a model for the intragovernmental merger at issue here. As a threshold issue in DANE COUNTY, the Commission held that the communicator positions fell within the AFSCME unit description and the Commission then upheld the statutory mandate of avoiding bargaining unit fragmentation. The recognition clause for the Courthouse unit in this case encompasses the employees in the new Department. The same job description for Telecommunicators now working for the County will be used when the new Department begins operations.

Teamsters further assert that clarification is supported by past practice and voluntary agreements between it and the County. The parties agreed in 1978 to include Telecommunicators in the Courthouse unit. The creation of the new Public Safety Communications Department should not interrupt that understanding. In other intragovernmental mergers, employees from the City of Green Bay have been accreted to the Teamsters' County Courthouse unit.

Teamsters submit that a unit of Telecommunicators would be inappropriate because of the further fragmentation of units and the long bargaining history between the County and Local 75 regarding Telecommunicators. The community of interest shared by the Telecommunicators is not sufficiently different from other County employees to require a separate unit.

Teamsters assert much of the community of interest analysis is speculative and the petition for an election is premature. Future operational changes could render the unit inappropriate, but in the absence of information, it is difficult to establish the existence of a significant community of interest between the Telecommunicators.

In Reply – ASFCME

AFSCME argues that the Commission should first determine whether the Telecommunicators unit is appropriate. Only if such a unit is inappropriate should the Commission determine whether the positions should be accreted into the Courthouse unit. The Teamsters have wrongly reversed these determinations. While the Teamsters found it significant that Green Bay communications employees do not perform dispatch duties, AFSCME asserts this difference is irrelevant because all Telecommunicators will perform identical duties as County employees.

AFSCME takes issue with the Teamsters' assertion that the DANE COUNTY decision is identical to the instant case. The AFSCME unit in DANE COUNTY was a broad, residual or wall-to-wall unit while the Brown County Courthouse unit is anything but a wall-to-wall unit, given the fact that there are 21 bargaining units. Also, unlike DANE COUNTY, there are few, if any, Courthouse positions that work three shifts, or work in a secure setting, or operate emergency services communication and teletype equipment. Further, positions in the Courthouse unit will share the same work location or supervision as the Telecommunicators.

AFSCME contends that the Teamsters' arguments regarding anti-fragmentation are self-serving and disingenuous. The Teamsters voluntarily removed Corrections Officers from the Courthouse unit to create a new unit and currently represent separate bargaining units for 15 airport employees, 10 museum employees and 5 sanitarians, respectively. While the Teamsters emphasized a history of voluntary agreements to accrete positions into existing bargaining units, the Commission was not called upon in those instances to determine whether the accreted positions shared a community of interest or whether the accreted positions would comprise an appropriate unit on their own. If the Commission were to accept such orchestrated accretions, the rights of employees to select a bargaining representative would be abrogated.

The petitions for election are not premature, AFSCME submits. The merger of positions into the Public Safety Communication Department is imminent, not speculative. The equipment is being installed. The AFSCME petition for an election should be granted and the Teamsters' petition for unit clarification should be dismissed.

In Reply – Teamsters

Teamsters assert that AFSCME and WPPA seek to minimize the negative effect that the long-standing inclusion of Telecommunicators in the Teamsters Courthouse unit has on their election petitions. Teamsters argue the Telecommunicators are now in the unit and fall within the existing unit description.

The existing contract covering County Telecommunicators bars the election petitions. DOUGLAS COUNTY, DEC. NO. 20608 (WERC, 5/83).

The appropriate unit analysis will only be relevant if the Commission determines that the Telecommunicators should not be clarified into the existing Courthouse bargaining unit. In determining the appropriate unit, the parameters of the existing unit are relevant and dispositive.

While AFSCME and WPPA argue fragmentation is irrelevant because the County already has 21 bargaining units, Teamsters submit that the presence of numerous bargaining units reinforces the danger of undue fragmentation. Carving up existing bargaining units to create additional units presents a significant fragmentation problem. Employees' free choice does not outweigh the statutory need to avoid fragmentation.

Teamsters argue that AFSCME and WPPA fail to demonstrate that a unit of only Telecommunicators would be appropriate. The Commission has noted that in structuring or revising unit descriptions, it is sensitive to the desirability of not disturbing previously established relationships between the parties without a compelling reason. There is no compelling reason for disturbing the more than 20 year bargaining history between Teamsters and the County of including Telecommunicators in the Courthouse unit.

DISCUSSION

Section 111.70(4)(d)2.a., Stats. provides in pertinent part:

The commission shall determine the appropriate bargaining unit for the purposes of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groups constitute a collective bargaining unit.

When making the determination of whether a unit is “appropriate,” we measure the facts presented by the parties against the statutory language of Sec. 111.70(4)(d)2.a., Stats. We use the following factors as interpretive guides to the statute:

1. Whether the employees in the unit sought share a “community of interest” distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. *ARROWHEAD UNITED TEACHERS V. WERC*, 116 WIS. 2D 580 (1984)

We have used the phrase “community of interest” as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase “community of interest” as a means of determining whether employees share similar interests, usually – though not necessarily – limited to those interests reflected in Factors 2-5. This definitional duality is long standing and has received the approval of the Wisconsin Supreme Court. *ARROWHEAD UNITED TEACHERS V. WERC*, SUPRA.

Factor 6 reflects our statutory obligation under Sec. 111.70(4)(d)2.a., Stats. to “avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force.”

Factor 7 - bargaining history— involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. *MARINETTE SCHOOL DISTRICT*, DEC. NO. 27000 (WERC, 9/91)

It is well established that within the factual context of each case not all criteria deserve the same weight and thus, a single criterion or a combination of criteria listed above may be determinative. Common purpose, MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NOS. 20836-A and 21200 (WERC, 11/83); similar interests, MARINETTE SCHOOL DISTRICT, SUPRA; fragmentation, COLUMBUS SCHOOL DISTRICT, DEC. No. 17259 (WERC, 9/79); bargaining history, LODI JOINT SCHOOL DISTRICT, DEC. No. 16667 (WERC, 11/78).

Teamsters have raised a threshold question as to whether the election petitions are timely given the existence of a Teamsters/County contract whose term extends through calendar year 2001 covering County employed Telecommunicators. We need not and do not resolve this issue because, as discussed below, we conclude that the unit of Telecommunicators sought by AFSCME and WPPA is not an appropriate one under the facts of this case.

We begin by acknowledging that the facts in the record regarding Factors 2-5 support the appropriateness of a Telecommunicators' unit. The Telecommunicators will have a separate workplace and separate supervision. They also have generally distinctive duties, skills, hours and conditions of employment.

To the extent the Factor 1 "community of interest" analysis reflects an overall consideration of Factors 2-5, Factor 1 also supports the appropriateness of a separate unit. However, as noted in Finding of Fact 11, when "community of interest" is viewed from the perspective of "common purpose", the Factor 1 support for a separate unit is diluted because Telecommunicators share a common purpose of providing emergency services with other County employees.

However, Factors 6 and 7 strongly support a conclusion that such a unit is not appropriate and we find those two factors decisive in our consideration of this case.

Factor 6 reflects the statutory mandate against undue fragmentation found in Sec. 111.70(4)(d) 2.a., Stats. This statute requires the Commission to ". . . avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force." Obviously, a conclusion that a Telecommunicators bargaining unit is appropriate would add an additional County bargaining unit and thus be at odds with this statutory mandate.

While the County has taken no position in this litigation and both AFSCME and WPPA note that there are already a large number of County bargaining units, we are obligated to apply and honor this statutory mandate in each case presented to us. MADISON METROPOLITAN SCHOOL DISTRICT, DEC. No. 21200 (WERC, 11/83); DANE COUNTY, DEC. No. 25002 (WERC, 11/87). Here, the mandate supports a conclusion that a Telecommunicators unit is not an appropriate one.

AFSCME and WPPA also correctly argue that we have historically noted the need to balance anti-fragmentation with an interest of establishing units that will not subordinate the unique interests and aspirations of a given group of employees. JUNEAU COUNTY, DEC. No. 27877 (WERC, 11/93); SHEBOYGAN COUNTY, DEC. No. 29847 (WERC, 3/2000). Here,

the presence of contractual memorandum of understanding between the Teamsters and the County regarding the wages, hours and conditions of employment of the 15 telecommunicators presently in the 240 employee Teamster unit establishes that bargaining within the context of the existing overall unit acknowledges the Telecommunicators' distinctive interests. The addition of an additional 30 Telecommunicators to the existing Teamsters unit can only serve to enhance the ability of the existing unit structure to meet the Telecommunicators' interests.

Factor 7 considers the applicable bargaining history-the extent of any previously established bargaining unit structure within which the Telecommunicators have existed. This Factor can and in this case does play a critical role because “. . . the Commission is sensitive to the desirability of not disturbing such a relationship without compelling reason.” MADISON METROPOLITAN SCHOOL DISTRICT, SUPRA; CITY OF GREEN BAY, DEC. NO. 21210-A (WERC, 3/84); SHEBOYGAN COUNTY, SUPRA. Here, Telecommunicators have been included in the Teamsters' bargaining unit since 1978. This long established bargaining history strongly supports a determination that a separate Telecommunicators unit is not appropriate.

Given all of the foregoing, we have concluded that the Telecommunicators unit sought by AFSCME and WPPA is not appropriate and we have therefore dismissed their election petitions. Because County Telecommunicators are already included in the existing Teamsters unit, we have granted Teamsters' unit clarification petition that the newly hired County Telecommunicators join those Teamsters represented Telecommunicators in the existing bargaining unit.

Dated at Madison, Wisconsin, this 17th day of January, 2001.

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