

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
LAKE GENEVA FIREFIGHTER'S ASSOCIATION
Involving Certain Employees of
CITY OF LAKE GENEVA (FIRE DEPARTMENT)

Case 45
No. 59035
ME-3782

Decision No. 30225

Appearances:

Shneidman, Hawks & Ehlke, S.C., by **Attorney John B. Kiel**, 700 West Michigan Street, P.O. Box 442, Milwaukee, Wisconsin 53201-0442, appearing on behalf of Lake Geneva Firefighter's Association.

von Briesen, Purtell & Roper, S.C., by **Attorney James R. Korom**, 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202-4470, appearing on behalf of the City of Lake Geneva.

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

The Lake Geneva Firefighter's Association filed a petition with the Wisconsin Employment Relations Commission on June 30, 2000 seeking an election in a bargaining unit of "All regular part-time and paid-on-call firefighters employed by the City of Lake Geneva, excluding the Fire Chief" to determine whether the employees in that unit wish to be represented for the purposes of collective bargaining by the Association.

A hearing was held on November 27, 2000, in Lake Geneva, Wisconsin by Examiner Karen J. Mawhinney, a member of the Commission's staff. The parties completed filing briefs by February 21, 2001. The City, contrary to the Association, asserts the firefighters are not municipal employees and that, in any event, the unit sought is not appropriate because it mixes regular part-time and casual employees.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Dec. No. 30225

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

FINDINGS OF FACT

1. The City of Lake Geneva, herein the City, is a municipal employer with its offices at 626 Geneva Street, Lake Geneva, Wisconsin 53147. The City's population is approximately 6,000.

2. The Lake Geneva Firefighter's Association, herein the Union, is a labor organization with its offices at 395 Oakwood Lane, Lake Geneva, Wisconsin 53147.

3. The City of Lake Geneva has a police and fire commission, herein the PFC, appointed by the Mayor pursuant to Sec. 62.13, Stats. The citizens of the City have given the PFC the "optional powers" set forth in Sec. 62.13(6), Stats., which include the power "to organize and supervise the fire and police departments and to prescribe rules and regulations for their control and management."

Section 62.13(8), Stats., authorizes the City Council to enact an ordinance providing for a fire department. City Ordinance Chapter 30-Article III, provides in part as follows:

ARTICLE III. FIRE DEPARTMENT

DIVISION 1. GENERALLY

Sec. 30-56. Recognized; delegation of duties.

The Lake Geneva Fire Department is officially recognized as the fire department of the city, and the duties of firefighting and fire prevention in the city are delegated to such department. (Code 1992, § 5.01)

*Cross references—Officers and employees, § 2-81 et seq.; city police and fire commission, § 2-261 et seq.

State law reference—Fire department generally, W.S.A., § 62.13.

Sec. 30-57. Appropriations.

The city council shall appropriate funds for fire department operations and for such apparatus and equipment for the use of the fire department as the council may deem expedient and necessary to maintain efficiency and properly protect life and property from fire.
(Code 1992, § 5.03)

Sec. 30-58. Compensation of officers and members.

The officers and members of the fire department shall receive such compensation from the city as may from time to time be fixed by the city council.

(Code 1992, § 5.04)

Secs. 30-59—30-75. Reserved.

DIVISION 2. FIRE CHIEF

Sec. 30-76. Presiding officer.

The chief shall preside at all meetings, call special meetings, preserve order and decide all points of order that may arise.

(Code 1992, § 5.06(2))

Sec. 30-77. Command at fires.

The chief shall be present at all fires and shall have complete command of and entire responsibility for all firefighting operations, plan the control of the same, direct the action of the department when it arrives at a fire, observe that the department does its duty, grant leaves of absence at a fire when he deems it proper and see that the firefighting apparatus is kept in proper condition at all times. In the absence of the chief, the next ranking officer of the department assumes command.

(Code 1992, § 5.06(3))

Sec. 30-78. Reports.

The chief shall submit a written report to the city council each year, and at such other times as he deems desirable, relating to the condition of various pieces of apparatus and appurtenances, the number of hydrants and the condition of the same, the number of fires occurring since the previous report and the date of the same and the loss occasioned thereby, the number of members of each company, the total number of active members in the department and resignations and expulsions from the department. He shall also report upon the drill and training program of the department, together with such other pertinent information, including recommendations for improvements, as he deems proper and necessary for the operation of the department.

(Code 1992, § 5.06(4))

DIVISION 3. ORGANIZATION AND CONTROL

Sec. 30-96. Bylaws.

The fire department shall adopt bylaws for its control, management and government and for regulating the business and proceedings of the department, which bylaws, after adoption by the members of the department, shall not become effective until approved by the city council. Amendments shall be adopted in the same manner.

(Code 1992, § 5.02)

Sec. 30-97. Organization.

(a) *Generally.* The organization and internal regulation of the fire department shall be governed by the provisions of this article and by such bylaws adopted by the department as are approved by the city council, except as otherwise provided by law or ordinance.

(b) *Selection of officers.* The election of the secretary, treasurer and such social officers as the bylaws may require, shall be held at the annual meeting of the department in the manner provided in the bylaws. In case of any vacancy, the chief shall appoint a member in good standing to fill the office until the next annual election.

(c) *Chief's appointment.* The police and fire commission shall appoint the chief of the fire department, who shall hold office during good behavior, subject to suspension or removal by the commission for cause.

(d) *Subordinate selection.* The selection process for members of the department shall be as follows:

(1) *Volunteer members.* Volunteer members of the department shall be selected according to the bylaws.

(2) *Full-time members.* Full-time members of the fire department shall be selected by the procedures prescribed in W.S.A., § 62.13.

(Code 1992, § 5.05)

Pursuant to City Ordinance Section 30-96, the City Fire Department has adopted bylaws that have, in turn, been approved by the City Council. The Department Bylaws provide as follows:

Bylaws of the Lake Geneva Fire Department

EXECUTIVE COMMITTEE The executive committee of the Lake Geneva Fire Department shall consist of the Fire Chief, 1st Assistant Chief, 2nd Assistant Chief, Secretary and Treasurer. The committee (sic) shall be assigned the general administrative functions of the Fire Department including the review of the Firefighter Eligibility list and recommendations for disciplinary actions.

ATTACHED ORGANIZATIONAL CHART For training purposes, inventory and maintenance of fire apparatus the Lake Geneva Fire Department is divided into four “companies” (or subdivisions), Engine, Hook and Ladder, Rescue and Emergency Medical Services (EMS). The Engine and Hook and Ladder companies will train on the second and fourth Mondays of each month. The Rescue and EMS companies will train on the third Monday of each month. All training sessions shall start promptly at 1900 hours on those days. All members (including probationary members) are expected to participate in all training sessions. Any member (including probationary members) shall notify the FIRE CHIEF to obtain an “Excused Absence” waiver for any fire training session prior to the start of said session. The general meeting of the Department shall be on the first Tuesday of each month. The annual meeting of the department shall be held on the first Tuesday of May each year.

OFFICERS AND MEMBERS. The duties and responsibilities of the officers and members shall be as required by Statute or Ordinance such as but not restricted to the following.

FIRE CHIEF. The Fire Chief is in charge of, and has final responsibility for all department property, personnel and activities. He/she shall have:

1. A competence in the field of fire technology and administration with a desire to improve the technical knowledge and abilities of the membership.
2. The ability to establish standards for entrance into, and training and promotion within the department.
3. A well developed sense of the responsibility and value of the fire department to the community.

He/she shall have the authority to:

1. Organize the department and its operations.
2. Appoint subordinate officers subject to Police and Fire Commission approval.
3. Supervise personnel, (sic) including taking disciplinary actions.

1ST ASSISTANT FIRE CHIEF. The 1st Assistant Fire Chief shall be in charge of the Fire Department in the absence of the Fire Chief. He/she shall also be in charge of training. He/she will plan a continuing program of training – maintain records of training by department personnel – report and make recommendations to the FIRE CHIEF as to the effectiveness of department operations and training.

2ND ASSISTANT FIRE CHIEF. The 2nd Assistant Fire Chief shall be in charge of apparatus, equipment and quarters and is responsible for their appearance, condition and maintenance. He/she shall maintain records and reports of tests of hose, ladders, pumps and other apparatus and advise the Chief of any deficiencies or recommendations for improvement of equipment or facilities. Upon arrival at a fire or other emergency and in the absence of the other Chief Officers, he/she shall assume command and direct operations until relieved by the Fire Chief or 1st Assistant Fire Chief. After being relieved, and during emergency operations, he/she will observe that all apparatus is operated in the proper manner.

CAPTAIN. Engine – Hook and Ladder – Rescue – EMS. The Captain is in charge of his/her company. He/she is responsible for the care and maintenance of the apparatus to which he/she is assigned and the equipment carried on it. He/she shall report any mechanical deficiency, lost or defective tools or equipment to the 2nd Assistant Fire Chief. It is his/her responsibility to ensure the apparatus is ready to respond at all times. When he/she is the first officer to arrive at a fire or emergency he/she shall assume command of operations until relieved by a Chief Officer. He/she shall be in command of his/her unit. He/she may also be called upon from time to time to conduct training on his/her company operations under the direction of the 1st Assistant Fire Chief.

LIEUTENANT. Engine – Hook and Ladder – Rescue – EMS. The lieutenant shall assist the Captain and perform his/her duties when he/she is absent. If he/she is the first officer to arrive at a fire or emergency he/she shall assume command of operations until relieved by a superior officer. He/she shall be in command of his/her unit in the Captains (sic) absence.

ENGINEERS. The engineer shall be fully trained in the operation of Fire Department apparatus. He/she may be called upon from time to time to conduct training on the various apparatus under the direction of the 1st Assistant Fire Chief.

FIREFIGHTERS. Firefighters shall be assigned to various companies where they will assist in maintaining the apparatus, equipment and stations in a clean and serviceable condition. They shall follow the orders of their company and Chief officers. At fires or emergencies they shall perform their duties under the direction and supervision of their officers.

FIRE INSPECTOR. The Fire Inspector is in charge of Fire Prevention and Fire Inspections. He/she plans and supervises inspections and other fire prevention programs – investigates complaints (sic) of hazardous conditions, investigates fire scenes to attempt to determine the cause of fire, maintains records of all inspections, hazards, violations and investigations conducted by him/her or members of the department.

MASTER MECHANIC. The Master Mechanic shall be elected at the annual meeting. The Master Mechanic shall have charge of all repairs of the Fire Department apparatus, supervision (sic) of the chemical extinguishers, and such other duties as specified by ordinance, by-laws, rules and regulations.

STEWARDS. The Stewards shall be elected at the annual meeting. The Stewards shall have charge of all cleaning and care of all fire apparatus under the direction of the Fire Chief and shall see that each and every piece is in condition for instant service at all times and shall include such other duties as specified by ordinance, by-laws, rules and regulations.

SELECTION OF OFFICERS. The Secretary, Treasurer, Master Mechanic and Stewards shall be elected at the annual meeting by a (?) vote of the general membership of the (dept) or (Division of Dept) or ?

MEMBERSHIP/TERMINATION/RETIREMENT. Members are required to attend all meetings of the department and training sessions for their company. Failure to attend six (6) meetings and/or training sessions may be cause for dismissal from the department. Illness, family emergencies, absence from the City, and such, shall be considered as valid reason for non-attendance, but satisfactory evidence of same shall be presented to the Chief.

(2) Any member who has been in continuous service for ten (10) years or more and who no longer desires to respond to fires may be placed on an honoree roll and shall have the same rights and privileges as other members except attendance at fires or other emergencies, compensation thereto and the right to vote.

STANDARD OPERATING PROCEDURES. The Fire Department shall maintain a Standard Operating Procedures manual and all members of the department are required to know the rules as set forth and obey said rules.

Pursuant to the Department bylaws, the City Fire Department has adopted Standard Operating Guidelines.

4. The City has two Fire Department stations and owns the buildings and the equipment in them. The Fire Department provides services of fire suppression, emergency medical and public education and has special units such as a dive team, a high angle rescue team and a confined space team. Department members have been trained to respond to hazardous materials spills or incidents. The Department also has a Fire Prevention Bureau that inspects buildings. The Department has mutual aid agreements with the Town of Geneva for fire suppression and the Town of Linn for emergency medical services.

There are 32 firefighters in the Department, excluding the Chief and Deputy Chief. The parties stipulated that the Chief and Deputy Chief are supervisors who would not be eligible to be included in any bargaining unit.

Firefighters are not stationed at the fire stations but respond from their homes or jobs to calls and pages from the Police Department. The City provides pagers to the firefighters. Firefighters are not required to make themselves available for all calls and are not required to remain within the area or the range of the pagers. They may not respond to a call because of their regular jobs or for a variety of other reasons.

5. Individuals who wish to become a member of the Department submit an application to the PFC. The application describes the "Hiring Process" and requires the applicant to sign the following Certification:

I UNDERSTAND THAT IF I AM EMPLOYED BY THE CITY, FALSE INFORMATION PROVIDED OR FALSE STATEMENTS MADE AS PART OF THIS APPLICATION MAY BE CONSIDERED AS CAUSE FOR DISMISSAL. (emphasis added)

The application process includes an informal interview with the Department's Executive Committee composed of the Fire Chief, the Deputy Chief, Assistant Deputy Chief, the Department Secretary and the Department Treasurer. The PFC conducts a formal interview and background check and then either approves or rejects the applicant.

6. The Department's Executive Committee makes disciplinary recommendations to the Fire Chief and/or takes disciplinary actions. Terminations can be appealed to the PFC. When taking disciplinary action, employee performance is measured against the Department's Bylaws and Standard Operating Guidelines.

7. The compensation received by members of the Department is established by City Resolution 00-2. City Resolution 00-2 states in pertinent part:

The Common Council of the City of Lake Geneva does hereby establish the following salary for its Elected Officials, Non-Represented, Part-Time and Seasonal employees:

● * *

PART-TIME POSITIONS:

● * *

Fire Chief	\$5,737/yr
Deputy Chief	\$3,442/yr
Asst. Chief	\$2,080/yr
Deputy Fire Dept. Stewards (2)	\$1,500/yr
Fire Dept. Sec.	\$567/yr
Fire Dept. Treas.	\$283/yr
Fire Dept. Chief Engineer	\$1,800/yr
Fire Dept. Captains (3)	\$574/yr
Fire Dept. Lieutenant (3)	\$332/yr
Fire Prevention Bureau (2)	\$11,440/yr
Firemen	\$10.00/hr/run
Emergency Medical Technicians	\$10.00/call

When Department members who receive yearly compensation respond to a call or attend a drill, they receive the additional compensation established by the Ordinance for such work.

8. Members of the Department are required to attend 50 percent of Department meetings, which are held once a month and last about two hours. They are required to attend 50 percent of drills or training which are held once per month for the 12 to 15 members who are Emergency Medical Technicians (EMTs) and twice a month for firefighting skills. Training lasts about two hours. Members must respond to 20 percent of the emergency calls, a requirement that was enacted in 1998 by the members of the Department.

9. Firefighters are paid ten dollars per hour for responding to fire calls. The officer in charge of a call keeps track of the beginning and ending time of the call. Firefighters are paid ten dollars per rescue call and ten dollars per drill, regardless of the number of hours spent on the call or drill. They are not paid for attending meetings. They may be paid for public educational activities, although it has been at the discretion of the Chief. They are usually not paid for additional certifications or re-certifications. The City has not authorized payment for new recruits to attend a technical college to obtain Firefighter I certification. Firefighters are given a monthly check by the City, which withholds the appropriate state and federal taxes.

10. Firefighters contribute more hours to the Department than they are paid for. In the year 2000, at least through November, there were nearly 1,000 hours of time that was not compensated. Department members have different levels of participation in fire calls and emergency medical service calls. There are about 12 to 15 members who are EMT's, although other members may be trained to respond with CPR or use an automatic defibrillator. There were 219 fire calls and 418 emergency medical service calls between January 1 and November 26, 2000. For the calendar year of 1999, there were 241 fire calls that required 3,350.87 hours and 459 emergency medical service calls that required 1,237.36 hours. In 1999 there were also 2,151.50 hours in training, and the Fire Prevention Bureau inspected 641 occupancies and spent 464 hours reviewing sprinkler plans and on-site construction. There were 1,360 uncompensated hours spent on station repairs, which included fixing a classroom, improving lighting and landscaping. The total number of hours was 10,955.73, including Fire Prevention Bureau inspections which amount to about 1,920 hours. The two Inspectors spent about 80 hours a month each on inspections. The firefighters also spent 4,000 unpaid hours converting a vehicle into a dive rescue communications van.

During one year between August 16, 1999 and August 16, 2000, the individual members varied in hours paid from a low of 1.5 hours to a high of 354.26 hours. They also varied in total hours from a low of 1.5 hours to a high of 400.76 hours. Those amounts do not reflect hours spent in fire inspections or hours performing duties as officers.

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

CONCLUSIONS OF LAW

1. Aside from the Fire Chief and Deputy Chief, all members of the City of Lake Geneva Fire Department are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

2. A collective bargaining unit of all firefighters employed by the City of Lake Geneva excluding supervisors and confidential, managerial and executive employees is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. A question concerning representation within the meaning of Sec. 111.70(4)(d)3, Stats., exists as to the municipal employees in the appropriate bargaining unit set forth in Conclusion of Law 2.

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 shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this Direction in a collective bargaining unit consisting of all firefighters employed by the City of Lake Geneva excluding supervisors and confidential, managerial and executive employees, who were employed on October 10, 2001, except such employees as may, prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of employees voting desire to be represented by the Lake Geneva Firefighter's Association for the purposes of collective bargaining with the City of Lake Geneva on issues of wages, hours and conditions of employment.

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

City of Lake Geneva

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

DISCUSSION

Background

The City of Lake Geneva Fire Department exists under the auspices of Sec. 62.13, Stats., which provides that in cities of a population of 4,000 or more, there shall be a “board of police and fire commissioners” appointed by a city’s mayor who, in turn, appoints a “chief of the fire department.” The citizens of the City have given the City of Lake Geneva Police and Fire Commission the following “optional powers” set forth in Sec. 62.13(6), Stats.

1. To organize and supervise the fire and police departments and to prescribe rules and regulations for their control and management.
2. To contract for and purchase all necessary apparatus and supplies for the use of the departments under their supervision, exclusive of the erection and control of the police and fire station buildings.
3. To audit all bills, claims and expenses of the fire and police departments before the same are paid by the city treasurer.

Section 62.13(8), Stats., provides:

(8) FIRE DEPARTMENT. The council may provide by ordinance for either a paid or a volunteer fire department and for the management and equipment of either insofar as not otherwise provided for by law. In the case where a combination of paid and volunteer fire department is provided for, such city shall be reimbursed by the department of transportation . . .

The City of Lake Geneva Ordinance (Chapter 30-Article III) establishing the City of Lake Geneva Fire Department provides in part as follows:

ARTICLE III. FIRE DEPARTMENT

DIVISION 1. GENERALLY

Sec. 30-56. Recognized; delegation of duties.

The Lake Geneva Fire Department is officially recognized as the fire department of the city, and the duties of firefighting and fire prevention in the city are delegated to such department. (Code 1992, § 5.01)

*Cross references—Officers and employees, § 2-81 et seq.; city police and fire commission, § 2-261 et seq.

State law reference—Fire department generally, W.S.A., § 62.13.

Sec. 30-57. Appropriations.

The city council shall appropriate funds for fire department operations and for such apparatus and equipment for the use of the fire department as the council may deem expedient and necessary to maintain efficiency and properly protect life and property from fire.
(Code 1992, § 5.03)

Sec. 30-58. Compensation of officers and members.

The officers and members of the fire department shall receive such compensation from the city as may from time to time be fixed by the city council.
(Code 1992, § 5.04)

Secs. 30-59—30-75. Reserved.

DIVISION 2. FIRE CHIEF

Sec. 30-76. Presiding officer.

The chief shall preside at all meetings, call special meetings, preserve order and decide all points of order that may arise.
(Code 1992, § 5.06(2))

Sec. 30-77. Command at fires.

The chief shall be present at all fires and shall have complete command of and entire responsibility for all firefighting operations, plan the control of the same, direct the action of the department when it arrives at a fire, observe that the department does its duty, grant leaves of absence at a fire when he deems it proper and see that the firefighting apparatus is kept in proper condition at all times. In the absence of the chief, the next ranking officer of the department assumes command.

(Code 1992, § 5.06(3))

Sec. 30-78. Reports.

The chief shall submit a written report to the city council each year, and at such other times as he deems desirable, relating to the condition of various pieces of apparatus and appurtenances, the number of hydrants and the condition of the same, the number of fires occurring since the previous report and the date of the same and the loss occasioned thereby, the number of members of each company, the total number of active members in the department and resignations and expulsions from the department. He shall also report upon the drill and training program of the department, together with such other pertinent information, including recommendations for improvements, as he deems proper and necessary for the operation of the department.

(Code 1992, § 5.06(4))

DIVISION 3. ORGANIZATION AND CONTROL

Sec. 30-96. Bylaws.

The fire department shall adopt bylaws for its control, management and government and for regulating the business and proceedings of the department, which bylaws, after adoption by the members of the department, shall not become effective until approved by the city council. Amendments shall be adopted in the same manner.

(Code 1992, § 5.02)

Sec. 30-97. Organization.

(a) *Generally.* The organization and internal regulation of the fire department shall be governed by the provisions of this article and by such bylaws adopted by the department as are approved by the city council, except as otherwise provided by law or ordinance.

(b) *Selection of officers.* The election of the secretary, treasurer and such social officers as the bylaws may require, shall be held at the annual meeting of the department in the manner provided in the bylaws. In case of any vacancy, the chief shall appoint a member in good standing to fill the office until the next annual election.

(c) *Chief's appointment.* The police and fire commission shall appoint the chief of the fire department, who shall hold office during good behavior, subject to suspension or removal by the commission for cause.

(d) *Subordinate selection.* The selection process for members of the department shall be as follows:

(1) *Volunteer members.* Volunteer members of the department shall be selected according to the bylaws.

(2) *Full-time members.* Full-time members of the fire department shall be selected by the procedures prescribed in W.S.A., § 62.13.

(Code 1992, § 5.05)

Pursuant to Ordinance Section 30-96, the Fire Department has adopted bylaws that have, in turn, been approved by the City Council. The Bylaws provide in part as follows:

Bylaws of the Lake Geneva Fire Department

EXECUTIVE COMMITTEE The executive committee of the Lake Geneva Fire Department shall consist of the Fire Chief, 1st Assistant Chief, 2nd Assistant Chief, Secretary and Treasurer. The committee (sic) shall be assigned the general administrative functions of the Fire Department including the review of the Firefighter Eligibility list and recommendations for disciplinary actions.

ATTACHED ORGANIZATIONAL CHART For training purposes, inventory and maintenance of fire apparatus the Lake Geneva Fire Department is divided into four "companies" (or subdivisions), Engine, Hook and Ladder, Rescue and Emergency Medical Services (EMS). The Engine and Hook and Ladder companies will train on the second and fourth Mondays of each month. The Rescue and EMS companies will train on the third Monday of each month. All training sessions shall start promptly at 1900 hours on those days. All members (including probationary members) are expected to participate in all training sessions. Any member (including probationary members) shall notify the FIRE CHIEF to obtain an "Excused Absence" waiver for any fire training session

prior to the start of said session. The general meeting of the Department shall be on the first Tuesday of each month. The annual meeting of the department shall be held on the first Tuesday of May each year.

OFFICERS AND MEMBERS. The duties and responsibilities of the officers and members shall be as required by Statute or Ordinance such as but not restricted to the following.

FIRE CHIEF. The Fire Chief is in charge of, and has final responsibility for all department property, personnel and activities. He/she shall have:

1. A competence in the field of fire technology and administration with a desire to improve the technical knowledge and abilities of the membership.
2. The ability to establish standards for entrance into, and training and promotion within the department.
3. A well developed sense of the responsibility and value of the fire department to the community.

He/she shall have the authority to:

1. Organize the department and its operations.
2. Appoint subordinate officers subject to Police and Fire Commission approval.
3. Supervise personnel, (sic) including taking disciplinary actions.

1ST ASSISTANT FIRE CHIEF. The 1st Assistant Fire Chief shall be in charge of the Fire Department in the absence of the Fire Chief. He/she shall also be in charge of training. He/she will plan a continuing program of training – maintain records of training by department personnel – report and make recommendations to the FIRE CHIEF as to the effectiveness of department operations and training.

2ND ASSISTANT FIRE CHIEF. The 2nd Assistant Fire Chief shall be in charge of apparatus, equipment and quarters and is responsible for their appearance, condition and maintenance. He/she shall maintain records and reports of tests of hose, ladders, pumps and other apparatus and advise the Chief of any deficiencies or recommendations for improvement of equipment or facilities. Upon arrival at a fire or other emergency and in the absence of the

other Chief Officers, he/she shall assume command and direct operations until relieved by the Fire Chief or 1st Assistant Fire Chief. After being relieved, and during emergency operations, he/she will observe that all apparatus is operated in the proper manner.

CAPTAIN. Engine – Hook and Ladder – Rescue – EMS. The Captain is in charge of his/her company. He/she is responsible for the care and maintenance of the apparatus to which he/she is assigned and the equipment carried on it. He/she shall report any mechanical deficiency, lost or defective tools or equipment to the 2nd Assistant Fire Chief. It is his/her responsibility to ensure the apparatus is ready to respond at all times. When he/she is the first officer to arrive at a fire or emergency he/she shall assume command of operations until relieved by a Chief Officer. He/she shall be in command of his/her unit. He/she may also be called upon from time to time to conduct training on his/her company operations under the direction of the 1st Assistant Fire Chief.

LIEUTENANT. Engine – Hook and Ladder – Rescue – EMS. The lieutenant shall assist the Captain and perform his/her duties when he/she is absent. If he/she is the first officer to arrive at a fire or emergency he/she shall assume command of operations until relieved by a superior officer. He/she shall be in command of his/her unit in the Captains (sic) absence.

ENGINEERS. The engineer shall be fully trained in the operation of Fire Department apparatus. He/she may be called upon from time to time to conduct training on the various apparatus under the direction of the 1st Assistant Fire Chief.

FIREFIGHTERS. Firefighters shall be assigned to various companies where they will assist in maintaining the apparatus, equipment and stations in a clean and serviceable condition. They shall follow the orders of their company and Chief officers. At fires or emergencies they shall perform their duties under the direction and supervision of their officers.

FIRE INSPECTOR. The Fire Inspector is in charge of Fire Prevention and Fire Inspections. He/she plans and supervises inspections and other fire prevention programs – investigates complaints (sic) of hazardous conditions, investigates fire scenes to attempt to determine the cause of fire, maintains records of all inspections, hazards, violations and investigations conducted by him/her or members of the department.

MASTER MECHANIC. The Master Mechanic shall be elected at the annual meeting. The Master Mechanic shall have charge of all repairs of the Fire Department apparatus, supervision (sic) of the chemical extinguishers, and such other duties as specified by ordinance, by-laws, rules and regulations.

STEWARDS. The Stewards shall be elected at the annual meeting. The Stewards shall have charge of all cleaning and care of all fire apparatus under the direction of the Fire Chief and shall see that each and every piece is in condition for instant service at all times and shall include such other duties as specified by ordinance, by-laws, rules and regulations.

SELECTION OF OFFICERS. The Secretary, Treasurer, Master Mechanic and Stewards shall be elected at the annual meeting by a (?) vote of the general membership of the (dept) or (Division of Dept) or ?

MEMBERSHIP/TERMINATION/RETIREMENT. Members are required to attend all meetings of the department and training sessions for their company. Failure to attend six (6) meetings and/or training sessions may be cause for dismissal from the department. Illness, family emergencies, absence from the City, and such, shall be considered as valid reason for non-attendance, but satisfactory evidence of same shall be presented to the Chief.

(2) Any member who has been in continuous service for ten (10) years or more and who no longer desires to respond to fires may be placed on an honoree roll and shall have the same rights and privileges as other members except attendance at fires or other emergencies, compensation thereto and the right to vote.

STANDARD OPERATING PROCEDURES. The Fire Department shall maintain a Standard Operating Procedures manual and all members of the department are required to know the rules as set forth and obey said rules.

As to the compensation received by members of the Department, City Resolution 00-2 states in pertinent part:

The Common Council of the City of Lake Geneva does hereby establish the following salary for its Elected Officials, Non- Represented, Part-Time and Seasonal employees:

● * *

PART-TIME POSITIONS:

● * *

Fire Chief	\$5,737/yr
Deputy Chief	\$3,442/yr
Asst. Chief	\$2,080/yr
Deputy Fire Dept. Stewards (2)	\$1,500/yr
Fire Dept. Sec.	\$567/yr
Fire Dept. Treas.	\$283/yr
Fire Dept. Chief Engineer	\$1,800/yr
Fire Dept. Captains (3)	\$574/yr
Fire Dept. Lieutenant (3)	\$332/yr
Fire Prevention Bureau (2)	\$11,440/yr
Firemen	\$10.00/hr/run
Emergency Medical Technicians	\$10.00/call

Does Wisconsin's Statutory Regulation of Fire Departments Preclude "Municipal Employee" Status for "Volunteer" Members of a Mixed Sec. 62.13(8) "Paid" and "Volunteer" Fire Department?

As noted above, Sec. 62.13(8), Stats., authorizes mixed fire departments of "paid" and "volunteer" members and City Ordinance Section 30-97(d) references the selection of "Volunteer" and "Full-time members" of the Department. Does the designation of a member of the department as a "volunteer" establish a legislative intent that such "volunteers" cannot be "municipal employees" of the City? Consistent with 80 OP. ATT'Y GEN. 61 (1991), we conclude not. In the 80 OP. ATT'Y GENERAL 61, the Attorney General was asked whether volunteer fire departments organized under Chapter 181 and Chapter 213 became public sector employers in various circumstances. The Attorney General opined that volunteer departments were either private sector or public sector employers depending upon the enabling statute under which the department was organized. The Attorney General concluded that where a volunteer department was organized under Chapter 181 or 213, it retained its "private" status even where "its affairs become entwined with those of a local governmental unit."

The opinion is instructive in several ways. First, despite the "volunteer" designation given the fire departments in question, the question analyzed was nonetheless whether the departments were private sector or public sector employers and thus whether the "volunteers" were private sector or public sector employees. Second, the opinion explicitly contrasts the "private" departments organized under Chapter 181 or 213 with the public sector departments organized under Sec. 62.13 (8), Stats.

From our consideration of 80 OP. ATT'Y GEN. 61 and our review of the numerous statutory provisions referencing volunteer fire departments 1/, we conclude that the statutory designation of “volunteer” in Sec. 62.13(8), Stats., does not preclude a determination that the “volunteers” are “municipal employees” of the City of Lake Geneva.

1/ Secs. 13.94(1)(q), 15.105(26), 16.25, 16.705(lm), 16.71(5), 20.505(4)(ec) and (er), 36.27(3m)(a)1m, 38.24(5)(a)1m, 59.34(2)(a)(b), 59.35(5), 61.65(8), 62.13(8), 66.0501(4), 71.34(1)(f), 77.54(16), 102.07(7), 108.05(3), 146.50(9), 146.55(4), 213.09(5), 340.01(3), 341.26(2)(k), 346.90, 347.25, 893.80(1)(3)(4) and (5) and 951.01, Stats.

Our conclusion that the statutes do not preclude us from finding that a statutorily or ordinance labeled “volunteer” is nonetheless a “municipal employee” does not resolve the actual status of the members of the City of Lake Geneva Fire Department. Thus, we now turn to a consideration of the merits of whether the members of the Fire Department are “employed by” the City within the meaning of Sec. 111.70(1)(i), Stats., and thus are “municipal employees.”

Municipal Employee Status in Fact

Section 111.70(2), Stats., provides that:

Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing. . . . (emphasis added)

Section 111.70(1)(i), Stats., defines a “Municipal employee” as:

. . . any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employee.

It is undisputed that the City of Lake Geneva is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats.

Therefore, if the members of the City of Lake Geneva Fire Department are municipal employees of the City, then these individuals have the rights set forth in Sec. 111.70(2), Stats., and the Union can seek to represent them for the purposes of collective bargaining. If the members of the City of Lake Geneva Fire Department are not municipal employees, then these individuals do not have Sec. 111.70(2), Stats., rights and the Union cannot seek to represent them for the purposes of collective bargaining.

As noted earlier, the critical statutory phrase in Sec. 111.70(1)(i), Stats., is “employed by.” We recently considered this same phrase in STATE OF WISCONSIN, DEC. NO. 24264-A (WERC, 2/2001) when determining whether unpaid practicum students of the University of Wisconsin are “employed by” the State of Wisconsin within the meaning of the definition of “employee” under the State Employment Labor Relations Act. We held as follows:

The applicable statute is Sec. 111.81(7)(b), Stats. In interpreting a statute, it is necessary to apply the rules of statutory construction. Our Supreme Court has summarized these rules as follows:

The goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. . . . To achieve this goal, we first resort to the plain language of the statute itself. . . . In the absence of statutory definitions, the court construes all words according to their common and approved usage, which may be established by dictionary definitions. . . . In addition, it is a basic rule of statutory construction that effect is to be given to every word of a statute if possible, so that no portion of the statute is rendered superfluous. . . . It is also a fundamental rule of statutory construction that any result that is absurd or unreasonable must be avoided. . . . If the meaning of a statute is clear from its language, we are prohibited from looking beyond such language to ascertain its meaning. . . . However, if a statute does not clearly set forth the legislative intent, we must look at the history, scope, context, subject matter, and object of the statute.

LAKE CITY CORP. v. CITY OF MEQUON, 207 Wis.2d 155, 162-163 (1997), (citations omitted).

Looking first to the language of the statute, the statute provides its own definition of “employee” and therefore it would be inappropriate to initially rely on other definitions of the term, be they statutory or otherwise. Section 111.81(7)(b), Stats., defines “employee” to include:

(b) Program, project or teaching assistants employed by the University of Wisconsin System, except supervisors, management employees and individuals who are privy to

confidential matters affecting the employer-employee relationship.

As the parties have recognized, the key phrase is “employed by.” The statute itself does not further define that phrase. The State asserts that the phrase “employed by” clearly means individuals whom the State pays in return for their services. Petitioner asserts the phrase explains nothing and is ambiguous. The dictionary provides several definitions for the term “employ”:

1. To make use of; use **2.** To keep busy or occupied; to take up the attention, time, etc. of; devote [to *employ* oneself in study] **3.** To provide work and pay for **4.** To engage the services or labor of for pay; hire – n. **1.** The state of being employed. Esp. for pay; paid service; employment. **2.** [Now Poet.] work or occupation – *SYN.* see USE.

Webster’s New World Dictionary, Second College Edition (1970), p. 459.

In *BEARD V. LEE ENTERPRISES, INC.*, 225 WIS. 2D 1 (1999), the Court concluded that,

“A statutory provision is ambiguous if reasonable minds differ as to its meaning. *SWEAT*, 208 WIS. 2D at 416. “Ambiguity can be found in the words of the statutory provision itself, or by the words of the provision as they interact with and relate to other provisions in the statute and other statutes.” *Id.* When construing a statute, the entire section and related sections are to be considered in its construction or interpretation. *Id.*; *STATE V. CLAUSEN*, 105 WIS. 2D 231, 244, 313 N.W.2d 819 (1982).”

(At pp. 10-11.)

In this case, the term “employed” can reasonably be interpreted to mean either “used to” provide such services or “hired” to provide such services for pay. Being susceptible of two meanings, we find the phrase “employed by” to be sufficiently ambiguous that it is necessary to look beyond the words of the statute to determine the legislature’s intent as to who is to be included under Sec. 111.87(7)(b), Stats.

. . .

Next, we look at the scope and object of the statute and the context in which the phrase, “employed by” is used. Section 111.81(7)(b), Stats., is an attempt to define a class of employees covered by SELRA. SELRA was enacted by the legislature to protect and promote the interest of the public, the State’s employees, and the State as the employer by, among other things, establishing

certain rights and responsibilities in the employee management relationship in State employment. Sec. 111.80 Declaration of Policy, (1) and (2), Stats. In other words, SELRA deals with the employment relationship between the State and its employees. For the purposes of SELRA, it was necessary to delineate who among the State's "employees" would be covered by the Act, e.g., employees in the classified service of the State are included in the Act's coverage, while supervisory, managerial and limited-term employees are not. The delineation is between classes or types of employees of the State. The term "employee" is commonly defined as "a person who works for another in return for financial or other compensation." American Heritage Dictionary, New College Edition (1981), p. 428. See also, Webster's New World Dictionary, Second College Edition, SUPRA. There is nothing apparent in SELRA that would indicate an intent by the legislature to go beyond that common meaning in defining an "employee". Rather, it appears that common meaning was understood and the purpose of defining the term was to narrow the definition to certain classes of employees within that broad group of persons paid to work for the State.

It is true that the term "employee" has been defined differently at various times and in various statutes; however, as the examples offered by the parties illustrate, the manner in which it has been defined has depended upon the purpose for which it was being defined. The courts often turn to the common law agency doctrine to define the term "employee" where the legislature has not done so. However, in many of those instances, the fact that the person is being compensated for their work is assumed and the attempt is to determine whether the person hired is an "employee" or an "independent contractor." See e.g., *NATIONWIDE MUTUAL INSURANCE CO., ET AL V. DARDEN*, SUPRA, and the case upon which it relies, *COMMUNITY FOR CREATIVE NON-VIOLENCE V. REID*, 490 U.S. 730 (1989). The courts also often look to the common law agency doctrine and apply the criteria for determining whether a master-servant relationship exists. We would note that the test generally applied by the courts in order to determine if such a relationship exists assumes payment of compensation by the hiring party ^{2/} and that one of the criterion is "method of payment", not whether there is payment. *DARDEN*, SUPRA, 503 U.S. at 323, *REID*, SUPRA, 490 U.S. at 751.

2/ While it is possible for the master-servant relationship to exist without compensation, that situation most often arises in the context of determining liability for injuries caused to or by the alleged servant, a purpose not applicable under SELRA. RESTATEMENT AGENCY, 2D, Sec. 225.

For the foregoing reasons, we conclude that the phrase “employed by the university of Wisconsin system” in Sec. 111.81(7)(b), Stats., is intended to include only those persons who are paid by the University of Wisconsin system to provide the services of a program, project or teaching assistant. While the practicum students may well provide such services in the course of completing the practicum courses in which they are enrolled, they do so for a grade and for credit toward their degree, and are not employed (hired and paid) by the State to provide such services. Thus, practicum students do not meet the definition of an “employee” within the meaning of Sec. 111.81(7)(b), Stats., and are not eligible to be included in Petitioner’s bargaining unit. Therefore, we have granted the State’s Motion to Dismiss and dismissed the petition.

Given the parallel nature of the rights and policies of the State Employment Labor Relations Act and the Municipal Employment Relations Act, application of the rationale of STATE OF WISCONSIN is appropriate here. EMPLOYMENT RELATIONS DEPT. v. WERC, 122 Wis.2d 132 (1985). Applying STATE OF WISCONSIN, we conclude that being compensated for services performed is a critical component of any definition of the phrase “employed by.” The members of City of Lake Geneva Fire Department are compensated for their services and thus satisfy this component of the statutory definition. 2/

2/ In the past, we have found volunteers are not “employed by a municipal employer” and thus are not “municipal employees.” CITY OF RICE LAKE, DEC. NO. 16413-B (WERC, 1/99); TOWN OF MADISON, DEC. NO. 17667-A (WERC, 6/80).

However, unlike the instant matter, nothing in the records of these cases indicate the subject “volunteers” were compensated in any fashion.

When further defining “employed by” in the context of the City’s contention that the members of the Department are really just civic minded citizens, it is useful to look at the questions of whether the members are “hired” or “disciplined” by the City or by the Department and whether the City or the Department determines the level of compensation. As reflected in SHEBOYGAN COUNTY, DEC. NO. 23013-A (WERC, 4/86); WASHBURN COUNTY, DEC. NO. 21674-A (WERC, 7/97); CITY OF COLUMBUS LIBRARY BOARD, DEC. NO. 29492 (WERC, 11/98); and RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 10095-F (WERC, 12/98), the critical areas of hiring, discipline and compensation loom large when determining whether an individual is employed and, if so, by whom.

Looking first at how an individual becomes a member of the Department, applicants submit an application to the City Police and Fire Commission whose members are appointees of the City’s Mayor under Sec. 62.13, Stats. The application describes the “Hiring Process” and requires the applicant to sign the following Certification:

I UNDERSTAND THAT IF I AM EMPLOYED BY THE CITY, FALSE INFORMATION PROVIDED OR FALSE STATEMENTS MADE AS PART OF THIS APPLICATION MAY BE CONSIDERED AS CAUSE FOR DISMISSAL. (emphasis added)

The application process includes an informal interview with the Department's Executive Committee composed of the Fire Chief, the Deputy Chief, Assistant Deputy Chief, the Department Secretary and the Department Treasurer. The Commission conducts a formal interview and background check and then either approves or rejects the applicant.

Given all of the foregoing, we conclude that members of the City of Lake Geneva Fire Department are "hired" and that the City is the decision maker as to hiring.

Turning to the question of discipline, the Department's Executive Committee makes disciplinary recommendations to the Chief and/or takes disciplinary actions. Terminations can be appealed to the Police and Fire Commission. When taking disciplinary action, employee performance is measured against the Department's Bylaws and Standard Operating Guidelines. The Department's Bylaws are approved by the City Council. Thus, we conclude the City is ultimately the decision maker as to disciplinary decisions.

As to question of compensation, the City determines the compensation level of all of the members of the Department -- most recently by a City Council resolution that establishes ". . . the following salary for its Elected Officials, Non-Represented, Part-Time and Seasonal employees:" and lists the positions held by all members of the Department under the heading "PART-TIME POSITIONS."

Given all of the foregoing, we conclude that the members of the Fire Department are "employed by" the City and thus are "municipal employees."

Appropriate Unit

If it is concluded that the members of the Department are municipal employees, the City then argues that the bargaining unit sought by the Union is not appropriate because it mixes regular part-time and casual employees. When determining whether a unit is "appropriate," the Commission considers the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees;
2. The duties and the skills of the 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 the 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. The degree to which the employees in the unit sought have a common or exclusive workplace;
6. Whether the unit sought will result in undue fragmentation of bargaining units;
7. Bargaining history.

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. 3/ This definitional duality is of long-standing, and has received the approval of the Wisconsin Supreme Court. 4/

3/ *WAUKESHA COUNTY TECHNICAL COLLEGE, DEC. NOS. 11706-C, 29564 (WERC, 2/99).*

4/ *ARROWHEAD UNITED TEACHERS V. WERC, 116 WIS.2D 580, 592 (1984). WAUKESHA COUNTY TECHNICAL COLLEGE, SUPRA.*

It should be understood, based upon long-standing Commission precedent, that within the unique factual context of each case, not all criteria deserve the same weight. 5/ Thus, a single criterion or a combination of criteria listed above may be determinative. 6/

5/ *SHAWANO-GRESHAM SCHOOL DISTRICT, DEC. NO. 21265 (WERC, 12/83); GREEN COUNTY, DEC. NO. 21453 (WERC, 2/84); MARINETTE COUNTY, DEC. NO. 26675 (WERC, 11/90).*

6/ *WAUKESHA COUNTY TECHNICAL COLLEGE, SUPRA; 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).*

Importantly, the question before us is not whether the unit sought is the most appropriate unit but rather whether it is an appropriate unit. OCONTO SCHOOLS, DEC. NO. 29295 (WERC, 1/98).

As to Factor 1, all of the employees in question have the shared purpose of providing emergency services to the City's citizens.

As to Factor 2, all of the employees share common duties and skills.

Turning to Factor 3, the wages and hours of the regular part-time employees differ from the wages and hours of the paid on-call casual employees but all employees share similar working conditions.

As to Factors 4 and 5, all employees share common supervision and a common workplace.

As to Factor 6, creation of one unit of Department employees is consistent with the admonition in Sec. 111.70(4)(d)2.a., Stats., that we create "as few collective bargaining units as practicable in keeping with the size of the total municipal work force."

Turning to Factor 7, the City has dealt with all Department members as a group when establishing their level of compensation.

Considering all of the foregoing, we conclude that the unit sought by the Union is an appropriate one. In reaching this conclusion, we acknowledge the City's point that we generally have not found units of regular part-time and casual employees to be appropriate. However, as noted above, we base our decisions on the facts presented in each case. Here, Factors 1-2, 4-7 all support the appropriateness of the unit sought and thus we have approved this unit and directed an election.

Dated at Madison, Wisconsin this 10th day of October, 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