

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WEST ALLIS FIRE FIGHTERS IAFF LOCAL 1004

Involving Certain Employees of
CITY OF NEW BERLIN

Case 106
No. 64584
ME-4024

Decision No. 32015

Appearances:

Timothy E. Hawks, Hawks, Quindel, Ehlke & Perry, S.C., Attorneys at Law, 700 West Michigan Avenue, Suite 500, P. O. Box 442, Milwaukee, Wisconsin 53201-0442, appearing on behalf of West Allis Fire Fighters IAFF Local 1004.

Alan E. Seneczko, Seneczko Law Offices, S.C., 1860 Executive Drive, Suite E-1, Oconomowoc, Wisconsin 53066, appearing on behalf of the City of New Berlin.

FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

On March 2, 2005, the West Allis Firefighters IAFF Local 1004 filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether the full-time firefighters employed by the City of New Berlin want to be represented by Local 1004 for the purposes of collective bargaining with the City.

On March 24, 2005, the City advised the Commission and Local 1004 that it would not agree to an election in the full-time firefighter bargaining unit sought by Local 1004. The City asserted that its regularly scheduled, part-time firefighters should be included in the same bargaining unit as the full-time firefighters because the regular part-time and full-time firefighters share a community of interest and because creation of a full-time firefighter unit would be contrary to the anti-fragmentation directive in Sec. 111.70(4)(d) 2.a., Stats.

The parties' attempts to resolve their disagreement as to the scope of the appropriate bargaining unit were ultimately unsuccessful and a hearing was held before Examiner Peter G. Davis on September 20, 2005 in New Berlin, Wisconsin. The record was completed on April 13, 2006 after the parties submitted briefs and entered into stipulations as to certain additional facts.

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

FINDINGS OF FACT

1. The West Allis Firefighters IAFF Local 1004, hereafter the Union, is a labor organization with offices at 2831 South 114th Street, West Allis, Wisconsin.

2. The City of New Berlin, hereafter the City, is a municipal employer with offices at 3805 Casper Drive, New Berlin, Wisconsin. The City employs approximately 470 employees who are eligible to be represented by a union for the purposes of collective bargaining. Approximately 170 full-time and part-time employees are included in three existing collective bargaining units: (1) a white collar unit of 57 employees; (2) a blue collar unit of 50 employees; and (3) a law enforcement unit of 63 employees. The remaining approximately 300 employees are unrepresented (171 seasonal parks, recreation and forestry employees, 108 Fire Department employees and 17 white collar employees).

3. The City's Fire Department was created in 2001. Prior to that time, emergency response services were provide to City residents through a non-profit, volunteer fire department.

4. The Fire Department has five fire stations, which are located throughout the City. Station 1 is adjacent to the City's Public Safety Building in which the offices of the Fire Department, Police Department, and the Municipal Court are located.

5. The City employs five full-time firefighters, approximately seventy-nine regularly scheduled part-time firefighters and approximately four unscheduled/casual firefighters.

The job description for the full-time firefighters identifies them as "Fire Inspectors" which reflects the inspection/code enforcement duties which they perform when they are not responding to emergency calls, training or performing station/equipment maintenance.

The job description for the regularly scheduled part-time firefighters identifies them as "Firefighter/EMT" which reflects their emergency response duties.

6. The primary responsibility of full-time Firefighters is responding to calls for emergency service. However, during their regularly scheduled hours, responding to such calls

accounts for only 20% of their work hours. Most of the remaining 80% of their regularly scheduled time is spent performing fire inspections and fire code enforcement duties, which involve inspecting commercial and residential properties for compliance with the City's fire code, as well as testing and certification of sprinkler systems and fire extinguishers and inspection of above and underground storage tanks. The full-time firefighters also perform non-emergency, station-maintenance duties during their scheduled hours, such as washing vehicles, cleaning turn-out gear and fire apparatus, restocking ambulances, performing minor building maintenance, and testing new equipment.

7. The primary responsibility of the regularly scheduled part-time firefighters is responding to calls for emergency service. They also perform the same non-emergency, station-maintenance duties as the full-time firefighters. The regularly scheduled part-time firefighters do not have any inspection or code enforcement duties.

8. When working in emergency response, training or station/equipment maintenance capacities, the full-time firefighters and the regularly scheduled part-time firefighters work together performing the same duties.

9. The full-time firefighters work Monday through Friday, from 8:00 a.m. to 4:30 p.m. During or after these scheduled duty hours, the full-time firefighters must participate in 6 hours of training per month and can choose to work on a "standby" basis.¹

10. Effective January 1, 2006, the regularly scheduled part-time firefighters each work 46 scheduled 12 hour shifts per year. The scheduled shifts are at Stations 1 and 5 from 6:00 p.m. to 6:00 a.m. each weekday and all weekend. Beyond these scheduled shift hours, the regularly scheduled part-time firefighters must participate in 6 hours of training per month and can choose to work on a "standby" basis. The combination of regularly scheduled shifts and training obligations of the regularly scheduled part-time firefighters will produce approximately 600 hours of regular work per firefighter in a year.

11. Between the weekday hours of 4:30 p.m. and 6:00 p.m., the Fire Department has no regularly scheduled employees on duty and provides emergency response service through full-time, regularly scheduled part-time or casual part-time firefighters who are working on "standby" basis or who respond through pagers to a request for service.

12. The full-time firefighters typically begin their work day in the Public Safety Building, handling office-related tasks and receiving their inspection assignments. If full-time firefighters receive an emergency response call while at the Public Safety Building, they cross the parking lot to Station 1 and respond to the call from that location. If they receive an

¹ Standby hours are those during which City firefighters – full-time, regularly scheduled part-time, and casual part-time – are permitted to wait at the City fire stations, on a voluntary, unpaid basis, for emergency response calls. The firefighters are not compensated for the time they spend waiting for such calls, but they are compensated for the time they spend responding to such calls.

respond to the scene in their Department vehicles, in which case they utilize the protective gear they keep in the trunks of their vehicles.

13. The regularly scheduled part-time firefighters respond to emergency response calls from the City fire stations at which they are working scheduled or standby hours.

14. When the full-time firefighters are responding to emergency response calls from the Public Safety Building, via Station 1, they generally arrive at the scene in the same apparatus as any part-time firefighters responding to such calls from Station 1.

15. The regularly scheduled part-time firefighters fill in for and work the hours of the full-time firefighters, when the full-time firefighters are not available to work for any reason, such as illness, out-of-town training, or vacations.

16. All full-time and regularly scheduled part-time firefighters are supervised by the City's Assistant Fire Chiefs and by the Fire Chief. Assistant Fire Chief Fred Schultz directs the inspection work of the full-time firefighters.

When providing emergency response, both the full-time and regularly scheduled part-time firefighters report to the "command officer", a designation generally given to the first Fire Department employee to arrive at an emergency scene. Although, on most occasions, an Assistant Fire Chief arrives at an emergency scene first, the first to arrive on a scene – and, hence, the command officer – could be the Fire Chief, a full-time firefighter, or a part-time firefighter. The preference of the Fire Department is to have an Assistant Chief or the Fire Chief serve as the command officer.

17. All full-time and regularly scheduled part-time firefighters are required to take the same written examination, to undergo a Comprehensive Physical Ability Test licensed by the International Association of Firefighters, to pass a medical examination, to undergo a background check, to be interviewed by the Fire Department's command staff and Fire Chief, and to be reviewed and certified by the Police and Fire Commission.

18. All full-time and regularly scheduled part-time firefighters must obtain the following certifications within eighteen months of hire: Firefighter I, Firefighter II, Driver/Operator-Pumper, Company Officer, EMT-Basic, Hazardous Materials Awareness, and Hazardous Materials Operations. Full-time firefighters are required to obtain a Hazardous Materials Technician certificate within eighteen months of hire. The City does not require regularly scheduled part-time firefighters to obtain such certification, but they receive a \$.25 per hour incentive pay increase if they do. Full-time firefighters also are required to obtain an EMT-IV certification within eighteen months of hire. The City also does not require regularly scheduled part-time firefighters to obtain such certification, but they receive a \$.50 per hour incentive pay increase if they chose to do so. In connection with their inspection duties, the full-time firefighters also must obtain their Fire Inspector I and Tank Inspector certifications within eighteen months of hire. Part-time firefighters have no such requirement,

and they do not receive any incentive pay for obtaining such certifications.

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19. All full-time and regularly scheduled part-time firefighters are issued the same equipment, personal protective gear, and uniforms.

20. All full-time and regularly scheduled part-time firefighters are required to attend two of the available Fire Department training sessions per month. The full-time and regularly scheduled part-time firefighters receive the same training, and they attend the training sessions together.

21. The full-time firefighters earn an hourly wage of between \$20.62 and \$22.14.

22. The hourly wage rate for the regularly scheduled part-time firefighters ranges between \$7.00 and \$13.75 depending on the skills/training of the individual. The average hourly wage for the regularly scheduled part-time firefighters is \$10.54.

23. The full-time firefighters receive health insurance, dental insurance, life insurance, long-term disability insurance, enrollment in the Wisconsin Retirement System, holidays, vacation, sick leave, and deferred compensation.

The only fringe benefits extended to regularly scheduled part-time firefighters are deferred compensation and eligibility to participate in the Wisconsin Retirement System if they worked 600 hours or more during the current or some previous year of employment with the City Fire Department.

Both the full-time and the regularly scheduled part-time firefighters are eligible for worker's compensation benefits, pursuant to the laws of the State of Wisconsin. Full-time and part-time Firefighters must work a minimum of 600 hours in a year to be eligible for duty disability benefits, pursuant to the laws of the State of Wisconsin.

24. All full-time and regularly scheduled part-time firefighters are subject to the Department's Operating Guidelines and work rules.

25. There is a higher turnover rate among the City's regularly scheduled part-time firefighters than there is among the City's full-time firefighters.

26. In the past, the Fire Department has proposed separate budget lines for the full-time firefighters and the part-time firefighters.

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

CONCLUSION OF LAW

All full-time fighters employed by the City of New Berlin excluding all part-time firefighters, supervisors, confidential, managerial and executive employees is not an

appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

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

ORDER

The petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 14th day of February, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

CITY OF NEW BERLIN

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

The issue before us is whether the full-time only firefighter unit sought by the Union and opposed by the City is an appropriate bargaining unit within which to conduct an election. The City contends that the bargaining unit is not appropriate, because it excludes regular part-time firefighters.

When determining whether a sought unit is appropriate, we measure the facts presented by the parties against the statutory language of Sec. 111.70(4)(d)2.a., Stats., which provides, in pertinent part, as follows:

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.

We use the following factors, as interpretive guides to the statute:

1. Whether the employees in the unit 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 at issue participate in a shared purpose, through their employment. We also have 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, pertaining to bargaining history, involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented in the past, 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 a single criterion or a combination of criteria listed above may be determinative. *See, e.g.*, LODI JOINT SCHOOL DISTRICT, DEC. NO. 16667 (WERC, 11/78) (bargaining history); COLUMBUS SCHOOL DISTRICT, DEC. NO. 17259 (WERC, 9/79) (fragmentation); MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NOS. 20836-A and 21200 (WERC, 11/83) (common purpose); MARINETTE SCHOOL DISTRICT, supra (similar interests).

It is also well-established that more than one bargaining unit may be appropriate for the employees at issue in a given situation, and that the Commission will direct an election in a petitioned-for bargaining unit as long as it is an appropriate unit, even if another unit placement may also be appropriate or even more appropriate. WAUKESHA COUNTY TECHNICAL COLLEGE, DEC. NO. 11076-C (WERC, 2/99).

Factor 1 - Community of Interest/Shared Purpose

As stated above, the Factor 1 “community of interest” criterion assesses whether employees participate in a shared purpose through their employment. The parties in the present case agree that both groups of firefighters share the common purpose of keeping the City safe.

Factor 2 - Duties and Skills

The primary responsibility of both the full-time and the regularly scheduled part-time firefighters is emergency response. When performing this responsibility, they often work together. The full-time and regularly scheduled part-time firefighters perform the same station/equipment maintenance duties and are obligated to attend the same Department training.

Regularly scheduled part-time firefighters do not perform any of the inspection/code enforcement work which consumes a substantial majority of the full-time firefighters' average work day.

Full-time and regularly scheduled part-time firefighters go through the same hiring process, which involves a written examination, a medical examination, a Comprehensive Physical Ability Test, a background check, interviews by the Fire Department's command staff and Fire Chief, and review and certification by the Police and Fire Commission.

Full-time and regularly scheduled firefighters must obtain the following certifications within the first eighteen months of employment: Firefighter I, Firefighter II, Driver/Operator-Pumper, Company Officer, EMT-Basic, Hazardous Materials Awareness, and Hazardous Materials Operations. Full-time firefighters must obtain additional certifications, some of which are related to their inspection/code enforcement duties.

Factor 3 - Wages, Hours, and Working Conditions

The average hourly wage of the full-time firefighters is roughly twice that of the regularly scheduled part-time firefighters. The fringe benefits of full-time firefighters substantially exceed those of the regularly scheduled part-time firefighters.

The regularly scheduled hours of the full-time firefighters differ from those of the regularly scheduled hours of the part-time firefighters. When responding to emergency calls and training, they share the same hours of work and working conditions.

Almost all of the regularly scheduled part-time firefighters work substantially fewer hours than the full-time firefighters.

There is a higher rate of turnover among the regular part-time firefighters than there is among the full-time firefighters.

Factor 4 - Supervision

The City's firefighters are all subject to the same supervisory chain of command, under which they may be disciplined by the Fire Chief and any of the four Assistant Chiefs. At the scene of an emergency response call, all firefighters report to the same commanding officer, who generally is the first-to-arrive command officer.

The inspection work of full-time firefighters is directed by Assistant Chief Schultz.

Factor 5 - Workplace

Unlike the regularly scheduled part-time firefighters, the full-time firefighters start their work day in the Public Safety Building and then work in whatever settings their inspection duties place them.

When training, performing station/equipment maintenance and responding to emergency calls, the full-time firefighters and regularly scheduled part-time firefighters work in the same location.

Factor 6 - Fragmentation

There are three existing bargaining units of City employees. Aside from seasonal employees, most of the remaining City employees eligible for union representation are employed by the Fire Department.

Factor 7 - Bargaining History

Where, as here, the employees are not currently represented by a union, we look to the question of how, if at all, the employees have interacted with the employer as to wages, hours and working conditions. While the full-time and part-time firefighters have separate budget lines, there is no evidence of full-time firefighters or regularly scheduled part-time fighters having discussion with the City separately or jointly as to wages, hours and working conditions.

DISCUSSION

As a general matter, we conclude that it is not appropriate to exclude regular part-time employees from a unit of full-time employees if both groups of employees perform similar work under similar conditions. NORTHERN OZAUKEE SCHOOL DISTRICT AUXILIARY ASSOCIATION, DEC. NO. 14211-C (WERC, 9/05). See also, WAUKESHA COUNTY TECHNICAL EDUCATORS, DEC. NO. 11076 (WERC, 6/72); JANESVILLE EDUCATION ASSOCIATION, DEC. NO. 6678 (WERC, 3/64).

There is nothing in the record before us here that persuades us that we should depart from that general approach in this case.

As to Factors 1-5 regarding “community of interest”, there are more matters that the full-time and regularly scheduled part-time fighters have in common than that distinctively separate them. They share a common purpose. In significant ways, they share duties and skills, supervision, hours, and workplace. While the Union makes much of the fact that the part-time employees do not perform inspection work and that such duties make up the lion’s

share of the full-time firefighters' work, this reality is of little moment where employees are part of the same occupation or profession. Inspection work, like the preeminent responsibility of providing emergency service, is part of the work of a firefighter. The fact that some firefighters perform this work and others do not only reflects the choice the employer has made as to which firefighters to use for what work. It does not create a persuasive basis for placing employees in the same occupation or profession in separate bargaining units.

The Union also points to the higher skill level required of full-time fighters. However, as befits members of the same occupation or profession, the core skills needed to perform the core responsibilities-in this case emergency response-are the same.

The Union correctly points out the compensation and hours worked disparities between full-time and almost all regularly scheduled part-time employees as well as the higher rate of turnover. We acknowledge that these disparities may well generate differing levels of interest as to matters such as job security and fringe benefits which might, in turn, make bargaining a contract that meets the needs of both full-time and part-time employees more difficult. However, it is important to note that these disparities are commonplace in any unit that includes full-time and regular part-time employees-units which we have previously noted are the norm where employees perform similar work under similar conditions. Thus, these disparities fall short of overcoming the community of interest generated here by shared purpose, common duties and skills and at least partially shared supervision, hours and work location.

As to Factor 6, creation of a five person bargaining unit in the context of the overall size of the City's work force would not be consistent with the anti-fragmentation intent of Sec. 111.70(4)(d)2.a., Stats.

As to Factor 7, there is no evidence of bargaining history.

In summary, we conclude that a full-time firefighter bargaining unit is not appropriate in the context of the community of interest between full-time and regularly scheduled part-time firefighters and the anti-fragmentation directive of Sec. 111.70(4)(d)2.a., Stats. The Union has indicated that it does not wish to stand an election in a full-time and regularly scheduled part-time firefighter unit. Therefore, we have dismissed the petition for election.

Dated at Madison, Wisconsin, this 14th of February, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

